

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEVADA

3 UNITED STATES OF AMERICA,)
4 Plaintiff,) Case No. 2:16-cr-00046-GMN-PAL
5 vs.) Las Vegas, Nevada
6) February 15, 2017
7) 8:10 a.m.
8 ERIC J. PARKER (11), O.)
9 SCOTT DREXLER(12), RICHARD)
10 LOVELIEN (13), STEVEN A.)
11 STEWART (14), TODD C. ENGEL)
12 (15), and GREGORY P.)
13 BURLESON (16),)
14 Defendants.) Day 6

11 TRANSCRIPT OF PROCEEDINGS
12 BEFORE THE HONORABLE GLORIA M. NAVARRO
13 UNITED STATES DISTRICT COURT CHIEF JUDGE, AND A JURY

14 APPEARANCES:

15 For the Government:

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21 Appearances continued on next page.

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25 Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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1 (Wednesday, February 15, 2017, 8:10 a.m.)

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3 P R O C E E D I N G S

4 (Jury out.)

5 THE COURT: Thank you. You may be seated.

6 We are going to call in the jury first and then have
7 you stand up and announce yourself for the record, so that way
8 the jury can see you and hear you explain who it is that you
9 are representing.

10 But first of all, I do want to make some preliminary
11 remarks outside of the presence of the jury just to let
12 everyone know, who may not have been here before, what the
13 expectations are for the manner in which the trial will be
14 conducted.

15 This is not a sporting event. This is a courtroom.
16 So, it is never appropriate for anyone to make any expression
17 of their opinion, either verbally or through body language, no
18 matter how much you might agree or disagree with what is being
19 said.

20 In addition, the attorneys are not to speak out of
21 turn. The defendant, Mr. Engel, who is represented -- is
22 representing himself, likewise, is not to speak out of turn.
23 And any person who makes an outburst or displays any
24 distracting or inappropriate body language will have to return
25 to the marshal's holding cell and listen to the remainder of

1 the day through the audio speaker.

2 I do also ask everybody here to make sure that you
3 have no cell phones or any other electronic devices. Whether
4 or not they are turned off, you are not to have them in the
5 courtroom. I have instructed the marshals to remove anyone who
6 has a cell phone or any other kind of electronic device. So
7 please take a moment to check and look and make sure that you
8 don't have one and make arrangements to leave those outside.

9 And this applies to the lawyers as well. They've
10 also been admonished that they are not to have their cell
11 phones out or any other cameras to record.

12 There is no audio or video recording allowed in the
13 courtroom, in federal court, and lawyers may only use their
14 electronic devices to present evidence for the record and
15 review the evidence so they can prepare.

16 As you can see, there are microphones at the tables.
17 You are always welcome to use those, if it is more convenient
18 for you, as you have lots of documents and books and things
19 spread out there. Likewise, we have the podium that's been
20 turned to face the witness, so you may also use the podium
21 instead, whichever one you prefer.

22 All right. So let's go ahead and bring in the jury,
23 and then I will have you go ahead and introduce yourselves for
24 the record. We do also have nameplates in front of each of the
25 defendants and each of the attorneys as well.

1 (Jury in.)

2 THE COURT: Everyone may be seated.

3 COURTROOM ADMINISTRATOR: This is the time set for
4 Day 6 of jury trial in Case No. 2:16-cr-046-GMN-PAL, United
5 States of America versus Eric Parker, O. Scott Drexler, Ricky
6 Lovelien, Steven Stewart, Todd Engel, and Gregory Burleson.

7 Counsel, please make your appearance for the record.

8 MR. MYHRE: Good morning, Your Honor. Steve Myhre,
9 Erin Creegan, Nadia Ahmed, and Nick Dickinson on behalf of the
10 United States.

11 THE COURT: Good morning.

12 MR. TANASI: Good morning, Your Honor. Rich Tanasi
13 for Steven Stewart who is present. Also with us at counsel
14 table is Gwen Wilson and Brian Glynn.

15 THE COURT: Good morning.

16 MR. MARCHESE: Good morning, Your Honor. Jess
17 Marchese on behalf of Eric Parker.

18 THE COURT: Good morning.

19 MR. LEVENTHAL: Good morning, Your Honor. Todd
20 Leventhal on behalf of Mr. Drexler. He's present.

21 MR. ENGEL: Good morning, Your Honor. Todd Engel
22 representing myself.

23 THE COURT: Good morning.

24 MR. PEREZ: Good morning, Your Honor. Shawn Perez on
25 behalf of Mr. Ricky Lovelien.

Michael Johnson - Direct

1 THE COURT: Good morning.

2 MR. JACKSON: Good morning, Your Honor. Terrence
3 Jackson on behalf of Greg Burleson. Also with me at counsel
4 table is Christine Abbott, who is Mr. Burleson's sight
5 translator and my investigator.

6 THE COURT: All right. Thank you. Good morning.

7 All right. Now, we do have Special Agent Johnson
8 back on the witness stand. Thank you for coming in on time,
9 sir.

10 And then we have Mr. Dickinson on behalf of the
11 government. You may continue with your direct examination of
12 Special Agent Johnson.

13 MR. DICKINSON: Thank you, Your Honor.

14 MICHAEL JOHNSON,
15 having been previously sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. DICKINSON:

19 Q. Good morning, Special Agent Johnson.

20 A. Good morning, sir.

21 Q. I believe when we broke yesterday, we were discussing the
22 morning of April 12th, 2014.

23 A. Yes, sir.

24 Q. And the previous night, you had worked in sort of a
25 security position right down in the heart of the ICP right by

Michael Johnson - Direct

1 the main buildings; correct?

2 A. Yes, sir.

3 Q. And then we'll start back off on that morning. At some
4 point, did you learn you were going to be -- were you told to
5 go somewhere else?

6 A. Yes. Approximately 11:15 in the morning, we were told
7 that there were a large group of people approaching post one,
8 and that we were to move from our location close to the ICP
9 towards post one.

10 Q. And did you do that?

11 A. Yes. Yes, I did.

12 Q. How did you do that?

13 A. In a vehicle. The entire investigative team that was in
14 the area relocated just behind post one.

15 Q. And specifically, where did you go?

16 A. I was right behind an old broken down tractor that was
17 just behind post one.

18 Q. And that was approximately 11:15-ish.

19 A. Approximately.

20 MR. DICKINSON: Can we bring up Government's
21 Exhibit 347 on the monitor?

22 COURTROOM ADMINISTRATOR: 347?

23 BY MR. DICKINSON:

24 Q. Yes. Special Agent Johnson, this is a screenshot
25 approximately 11:30. From this aerial view, can you see where

Michael Johnson - Direct

1 you would have been at post one?

2 A. Yes, I can.

3 Q. Can you circle it on the screen?

4 At approximately -- were you with anybody or next to
5 any specific person?

6 A. I rode up in the vehicle with Special Agent Shilaikis, and
7 when we all arrived there, I was there with the -- the rest of
8 the investigative team and others.

9 Q. And about how long were you at this specific spot?

10 A. I'd say approximately 15 minutes.

11 Q. And before you left that spot at 15 minutes, did Special
12 Shilaikis do anything?

13 A. Special Agent Shilaikis was recording the events that were
14 occurring with a video camera.

15 Q. So at some point when you were there for that brief period
16 of time, he started recording?

17 A. Yes, he did.

18 Q. And when you were at this spot for, as you say,
19 approximately 15 minutes, what did you observe?

20 A. When we arrived at the area, we began to see large groups
21 of vehicles driving on the freeway coming in our direction.

22 Q. Is that what we are seeing over here?

23 A. Yes.

24 Q. Did you see anything specifically, at this time, in those
25 first 15 minutes, that gave you any concern?

Michael Johnson - Direct

1 A. Yes, definitely. And I was narrating on the video which
2 Agent Shilaikis was recording, calling out some of the things
3 that I was seeing. We began to see persons with all types of
4 weapons, wearing all types of military fatigues and so forth.

5 Q. And when you say "all types of weapons," what do you mean?
6 What did you see?

7 A. We were seeing assault-style rifles, bolt-action-style
8 rifles, handguns, extra magazines for handguns and assault
9 rifles. Military-style fatigues. Persons wearing body armor,
10 persons wearing elbow pads, knee pads, protective helmets.

11 Q. And why was this of concern to you?

12 A. It was of great concern to me. It was unlike anything I
13 had ever seen before in my law enforcement career.

14 Q. And you said you were there about 15-ish minutes. Where
15 did you go then?

16 A. There was one of the command staff that was located with
17 us there. He was a special agent in charge of another region
18 named Loren Good. He began to make assignments to move
19 investigative team members to additional areas to bolster the
20 support.

21 Q. And how was that communicated to you? Was that over
22 radio? Were you wearing a radio?

23 A. I was wearing a radio, but we were in voice communication.
24 We were close enough to just speak to each other.

25 Q. And the radio you were wearing, was that called -- sort of

Michael Johnson - Direct

1 like a walkie-talkie type style with an earpiece?

2 A. I had a shoulder mike. I didn't have an earpiece.

3 Q. So you were hearing it audibly?

4 A. I could hear it audibly out loud.

5 Q. And that would have been any radio traffic off that
6 frequency you were on?

7 A. Yes.

8 Q. And while we are on it, what were you wearing?

9 A. I was wearing jeans and a T-shirt. I put on my body armor
10 at that time and a ball cap.

11 Q. And were you carrying any weapons?

12 A. Yes, I was. I was carrying my government-issued sidearm
13 pistol with a couple extra magazines. I was also carrying my
14 government-issued AR15.

15 Q. And where -- when you left here, where did Agent Good tell
16 you to go?

17 A. He directed myself and Ranger David Russell to move over
18 to an area between post one and post two down in the wash.

19 Q. Thank you. Can you see that area in this picture?

20 A. Yes, I can.

21 Q. Is that specifically where you were?

22 A. I believe so. If there was another view from the other
23 side, I could confirm that, but I believe that is where we
24 were.

25 Q. Was that any sort of a structure?

Michael Johnson - Direct

1 A. That is a generator with a light tower attached to it.

2 Q. Will you pull up Government -- can we publish Government
3 Exhibit 132, clip C, and go to approximately 19:26:40. I
4 think -- if you could look on your screen, I think there's a
5 clear button.

6 A. I got it.

7 (Exhibit 132 being played.)

8 Q. You can pause it right there. This is the opposite view.
9 Can you see here where you were?

10 A. Yes, I can.

11 Q. All right. And approximately how long were you at that
12 position?

13 A. I was there until we were told that the gather was
14 concluding, and we returned to the ICP to gather our belongings
15 and leave. It was approximately an hour to two hours.

16 Q. So if you got up to post one at 11:15 and were there about
17 15 minutes, you would have gotten here 11:30, 11:30-ish, 11:45
18 fair to say?

19 A. Fair to say.

20 Q. Now, just in general, what were you doing standing there
21 until you were told to leave that post?

22 A. Well, specifically, we were using the generator as cover
23 due to the large numbers of persons that we were seeing with
24 weapons. And we were there to provide cover for those that
25 were down inside the wash.

Michael Johnson - Direct

1 So we were doing two things. We were protecting
2 ourselves by being there and protecting the others that were
3 down below us.

4 Q. Now, I will try to have you give the jury the view of what
5 you could -- what you could actually view, because you couldn't
6 view everything; correct?

7 A. Correct.

8 Q. The sort -- could you view the north and southbound lanes
9 as they were over the wash? So, essentially, what we're
10 referring to as the bridges?

11 A. Yes, I could see those.

12 Q. How far could you see -- could you see into the wash in
13 between the bridges from where you were standing?

14 A. No, I couldn't.

15 Q. So, if the bridge -- and I am holding my hands
16 apart about -- I don't know -- a foot. If this is a bridge,
17 you could you see all the way to the ground or at some point
18 did your view stop?

19 A. In between the bridges, no, we couldn't see in. On the
20 north side of the bridge down where our people were, we could
21 see down into the bottom.

22 Q. If we could go just up to 19:27.

23 (Exhibit 132 being played.)

24 Q. Just keep going a little bit more, please. Please, we can
25 stop it there.

Michael Johnson - Direct

1 (Exhibit 132 being played.)

2 Q. So you could -- you couldn't see down here then?

3 A. No, sir.

4 Q. But you could see right there?

5 A. Yes.

6 Q. Okay. Then -- so you couldn't see in the middle here?

7 A. No, sir.

8 Q. All right. So during your time by the light generator,
9 were you using any sort of -- do you have binoculars?

10 A. I did have binoculars.

11 Q. And were you using those binoculars?

12 A. I was.

13 Q. And what were you using those for?

14 A. I was using them to view persons and places that were, I
15 mean, close in, far away. Using them to view everything I
16 could.

17 Q. So were you scanning up and down both sides of the I-15?

18 A. Yes, I was.

19 Q. And what were you seeing? What were you seeing that gave
20 you concern, if anything?

21 A. Well, we were -- we continued to watch the crowds and the
22 vehicles gather on both sides of the I-15 as time went on. One
23 of the most specific things, that I recall that I will never
24 forget, was something that I recognized very clearly to be a
25 sniper and a spotter.

Michael Johnson - Direct

1 I know this, because I am very active in the
2 outdoors. I am a regular hunter and outdoorsman and use
3 binoculars and range finders on a regular basis. And I
4 recognized very quickly an individual that -- there were two
5 individuals. One individual that was carrying an assault-style
6 rifle, and he lowered himself below the concrete barricades,
7 and I didn't see him again.

8 Q. Let me stop you right there.

9 A. Okay.

10 Q. Which concrete barricades? I'm not saying it took place
11 at this time, but will this picture right here help you
12 describe?

13 A. Yes, it would have been on the -- on the far side of I-15
14 in this area over here.

15 Q. Okay. Do you recall the specific area sitting here today?

16 A. I can't tell you exactly where he was. He was -- the
17 crowd was very large and extensive when we were looking at it,
18 and they were in there. And I wasn't solely focusing on those
19 persons. I was scanning all kinds of areas.

20 Q. Okay. So you saw two people that gave you concern in this
21 incident?

22 A. I did.

23 Q. One had a rifle?

24 A. One had an assault-style rifle, and he -- I saw him,
25 through my binoculars, lay down behind the concrete barricade.

Michael Johnson - Direct

1 And I did not see him stand up again. He was with a second
2 individual who had binoculars and a range finder.

3 MR. MARCHESE: Objection. Foundation. I want to
4 know how he knows that he's with this individual.

5 BY MR. DICKINSON:

6 Q. Where was the second individual --

7 A. They were immediately --

8 Q. Sorry. Let me ask -- I don't want to talk over you, so
9 let me ask the question.

10 Where was the second individual in relation to first
11 individual?

12 A. Standing right next to him.

13 Q. Like -- say this is the first individual. I'm the second
14 individual. How close?

15 A. Right -- all the way right next to him.

16 Q. Like a foot?

17 A. Standing together.

18 Q. So you see the first individual was standing up, and do
19 you recall how they were holding the rifle?

20 A. He had it slung with a sling over his -- over his
21 shoulder.

22 Q. And then person dropped down behind --

23 A. The person dropped behind the concrete barrier.

24 Q. -- concrete barrier. So you couldn't see him at all.

25 A. Couldn't see him at all.

Michael Johnson - Direct

1 THE COURT REPORTER: Please do not talk over one
2 another.

3 MR. DICKINSON: I apologize.

4 MR. TANASI: Your Honor, I am going to object to the
5 line of questioning as well. Just from foundational purposes,
6 we don't know what time we're talking about here.

7 THE COURT: Do you want to set a time?

8 BY MR. DICKINSON:

9 Q. To the best of your ability, you got down -- you testified
10 down here about between 11:30 and 11:45. Do you recall today
11 specifically what time you saw that?

12 A. My best estimation would be sometime between 12:00, 12:30.

13 MR. TANASI: Your Honor, same objection. Sounds like
14 a guess to me. Sounds like he's speculating.

15 THE COURT: Overruled.

16 BY MR. DICKINSON:

17 Q. So first -- you are talking -- you first person you saw.
18 What did you see the second person do that gave you -- if --
19 that caused you concern?

20 A. The second person dropped down shortly after the first
21 person dropped down. And then periodically, I would see him
22 pop back up over the concrete barricade. And at times he was
23 using binoculars to look, and at other times, what gave me the
24 most concern, is what I recognized to be in his hand is a
25 handheld range finder. A range finder is --

Michael Johnson - Direct

1 Q. What -- what is a range finder?

2 A. A range finder is something that is used to determine
3 distances between the person and a given object.

4 Q. And how did you recognize that as a range finder?

5 A. I recognized this, because I own one personally. I -- I
6 have a government-issued range finder. I have used them for
7 many years.

8 And I distinctly remember this individual holding the
9 range finder in his right hand. They are a singular ocular
10 device which has one lens. He brought it up to his right eye
11 with his right hand. And I saw him do that a number of times
12 pointing it at different individuals, and, in fact, pointing it
13 at me.

14 Q. And did that give you concern?

15 A. It gave me great concern.

16 Q. Why?

17 A. I have never seen anybody in any situation ever use a
18 range finder to look at me or my fellow officers. Nor could I
19 envision them doing that for any reason other than to cause me
20 harm.

21 Q. And how were you feeling at that time?

22 A. At that time, I began to be even more concerned than I
23 already was.

24 Q. What were you concerned for?

25 A. I was concerned that he was providing distances to the

Michael Johnson - Direct

1 person that I saw drop below the barricades first to
2 potentially engage us in gunfire.

3 Q. So did you feel threatened?

4 A. Absolutely.

5 Q. Were you concerned for the safety of your fellow officers?

6 A. Absolutely.

7 Q. And at some point, did your view or attention get drawn
8 away from -- from those individuals?

9 A. Yes, it did.

10 Q. And what were you continuing to see?

11 A. We were continuing to see all manner of persons, men,
12 women, children, both armed and unarmed, move about. And, I
13 mean, in every direction we could see.

14 Q. And you mean every direction. Do you mean -- because
15 you've said you couldn't see in between the bridges, so would
16 it be around?

17 A. Anywhere we could see, we could -- there were people in
18 front of us.

19 Q. Now, I specifically want to draw your attention -- again,
20 I'm not specifically this time at 12:27. But on the northbound
21 bridge, so over here, which I have circled with red, at some
22 point did you notice what appeared to you to be other law
23 enforcement officers?

24 A. Yes, I did.

25 Q. Were you aware what agency they were with?

Michael Johnson - Direct

1 A. I believed them to be Nevada Highway Patrol based on their
2 uniform.

3 Q. And what did you see? Were they in or out of their
4 vehicles?

5 A. They were out of their vehicles.

6 Q. And what did you see them doing?

7 A. I just saw them walking around amongst the people on the
8 overpass and in the area of the overpass.

9 Q. And based on what you were observing, did that cause --
10 did that cause you any concern about what actions or nonactions
11 you may need to take?

12 A. I remember being extremely confused as to why they were
13 just walking around in the area. And I'm still confused to
14 this day. I don't -- I don't know exactly what they were
15 doing.

16 Q. Now, you a second ago said that you saw also types of
17 people. So first you saw people armed. You mentioned rifles.
18 Handguns as well?

19 A. Yes, sir.

20 Q. You saw unarmed individuals; correct?

21 A. Yes, sir.

22 Q. Men, women, people that appeared underage?

23 A. Yes, sir.

24 Q. Did the totality of that -- of those different types of
25 people intermingling pose a concern to you?

Michael Johnson - Direct

1 A. It was a great concern.

2 Q. And why is that?

3 A. Well, our -- I was contemplating the difficult situation,
4 the difficult option of if I was forced to use deadly force, it
5 would be extremely difficult to do so given the other persons
6 that were intermingled with those that were -- that were armed.

7 Q. Now, when you were -- when you were down at the light --
8 the light post, when you were observing things, did you observe
9 Special Agent -- were you able to see or did you see Special
10 Agent Love walk to the -- to the gate?

11 A. I saw him walking in the area, but we couldn't see clear
12 to the bottom. I couldn't see him when he -- he became out of
13 view at one point.

14 Q. Okay. And at some point thereafter, did you see him come
15 back?

16 A. Yes, I did.

17 Q. And was he with anybody?

18 A. I don't recall.

19 Q. At some point after Special Agent Love came back, were you
20 given further direction which caused you to leave where you
21 were?

22 A. Yes. We were given direction via the -- via radio traffic
23 and in person that we should return to the ICP, gather our
24 belongings, and prepare to leave.

25 Q. And were you given a time period? How long you had?

Michael Johnson - Direct

1 A. It was as soon as possible.

2 Q. Were you told why?

3 A. I was not told why.

4 Q. So did you, in fact, gather your belongings?

5 A. Yes, we did. The -- the -- all the law enforcement
6 officers returned to the ICP and began loading up their trucks,
7 hooking on trailers as fast as we could.

8 Q. And how did -- did you leave?

9 A. Yes, we did.

10 Q. And how did you leave?

11 A. We left in our vehicles.

12 Q. All together?

13 A. All together.

14 Q. Will you pull back up Government Exhibit 347.

15 Did you leave out of the entrance at post one?

16 A. Yes, we did.

17 Q. So you would have come like this onto the 15?

18 A. Yes, and then --

19 Q. You can do it.

20 So you just drew -- you came through the median and
21 then onto the northbound bridge up to -- towards Mesquite?

22 A. Yes, we returned to our hotel in Mesquite.

23 Q. And what -- what happened when you got to your hotels in
24 Mesquite?

25 A. Well, we -- when we left and we crossed the median, we --

Michael Johnson - Direct

1 there was a large group of people that were gathered in the
2 area. And I had my --

3 Q. Let me stop you.

4 A. Oh.

5 Q. Let me ask that question. When you left, were there
6 people that were watching here?

7 A. Yes, there were lots of people and --

8 Q. And where were --

9 A. -- lots of vehicles.

10 Q. -- where were the people primarily gathered?

11 A. (Indicating.)

12 Q. And so as you pulled out through here and went down,
13 drawing back the direction you had, what was -- were you able
14 to observe the mood of the crowd?

15 A. Yes, I was. I had the windows cracked in my vehicle, so I
16 could hear what they were saying. And as I drove past, there
17 were people yelling and screaming obscenities at us and -- as I
18 drove past, and then we returned to Mesquite.

19 Q. So you get to your hotel at Mesquite, and what did you do
20 there?

21 A. We packed our belongings in our hotel rooms and got in our
22 vehicles to prepare to depart for Las Vegas.

23 Q. So you didn't stay in Mesquite that night?

24 A. No, we didn't. In fact, while we were packing up our
25 rooms, Las Vegas Metropolitan SWAT team was standing guard at

Michael Johnson - Direct

1 the hotel so we could pack our belongings and leave in safety.

2 Q. Based on your training and experience, is that unusual to
3 have another agency providing another agency protection?

4 A. Very unusual.

5 Q. You talked about the -- that you felt threatened or in
6 fear on the 12th. At what point did you stop feeling concern
7 for your safety?

8 A. It would have been later that evening after we arrived in
9 Las Vegas at a new hotel and -- and we were amongst -- I was
10 amongst my peers. It was just later that evening.

11 Q. Now, yesterday you testified about your -- starting back
12 in March, your original involvement in the impoundment, which
13 was just reaching out to the Bundy family, and you had a
14 conversation with Ryan Bundy.

15 Did that conversation ever cross your mind when you
16 were in the wash on the 12th?

17 A. I began to reflect upon it more that evening after --
18 after we were in Las Vegas. And it was ringing in my --
19 ringing true to me that what he had said he would do, he did.
20 That he would stop the gather, and that he would have hundreds
21 of supporters to help him do it.

22 Q. And how, if at all, has the experience of
23 April 12th affected you?

24 A. It has been -- I have thought about it many, many times in
25 the last few years. There is a distinct point to me that is

Michael Johnson - Cross

1 something that is different than anything else I've ever
2 experienced in my law enforcement career.

3 Normally, when potential use of force situations
4 occur, it would be something such as myself and another team
5 members serving an arrest warrant or a search warrant. And we
6 would know that we were going into a potential situation, a
7 harmful situation.

8 In this case, I felt like the day of the 12th, we
9 were sitting at the ICP and minding our own business, if you
10 will. And these persons came at us, which was a very
11 distinguishing factor for me.

12 MR. DICKINSON: One second, Your Honor. May I have
13 one minute?

14 THE COURT: Yes.

15 (Pause in the proceedings.)

16 MR. DICKINSON: Thank you, Your Honor. I will pass
17 the witness.

18 THE COURT: Cross-examination.

19 MR. TANASI: Yes, Your Honor, briefly.

20 THE COURT: All right, Mr. Tanasi.

21 MR. TANASI: Thank you.

22 CROSS-EXAMINATION

23 MR. TANASI:

24 Q. Good morning, Agent Johnson. How are you?

25 A. Good morning, sir. Well. Thank you.

Michael Johnson - Cross

1 Q. Good. My name is Richard Tanasi. I represent Steven
2 Stewart. I've got just a couple questions for you on cross.
3 Okay?

4 A. Okay.

5 Q. Yesterday we heard a kind of audio snippet version of your
6 phone call with Ryan Bundy prior to April 12, 2014. Do you
7 remember that?

8 A. I do.

9 Q. We heard a few of them; right?

10 A. Yes, sir.

11 Q. All right. And just for the record, stating the obvious,
12 that conversation was not with my client, Steven Stewart;
13 correct?

14 A. No, it was not.

15 Q. In fact, you have never spoken to my client, Steven
16 Stewart, before in the past; correct?

17 A. Never.

18 Q. Okay. Now, you indicated on the 12th that on that
19 northbound bridge where you saw what you've called are snipers
20 and spotters, you also saw NHP and Metro just walking around;
21 right?

22 A. I recall --

23 Q. Yes or no, sir.

24 A. Yes. Not both. I recall one.

25 Q. Okay. Did you see NHP just walking around?

Michael Johnson - Cross

1 A. Yes, I did.

2 Q. Thank you. And on the 12th, Agent Love -- he is your
3 boss; correct?

4 A. Not now. On the 12th. Excuse me. Yes, he was.

5 Q. He is no longer your boss. Why is that?

6 MR. DICKINSON: Objection. Relevance.

7 THE COURT: Sustained.

8 BY MR. TANASI:

9 Q. Sir, on the 12th, Agent Love, he was your boss; correct?

10 A. Yes.

11 Q. And so he was in charge; fair to say?

12 A. Yes.

13 Q. Okay. He was an important part of the day's events on the
14 12th; fair to say?

15 A. Yes.

16 Q. Very important part. Probably the most important part;
17 correct?

18 A. I agree.

19 Q. Thank you, sir. In this case, you prepared a report;
20 fair?

21 A. Yes.

22 Q. Prepared several reports; right?

23 A. Yes.

24 Q. In fact, you prepared a report related to your events on
25 the 12th; correct?

Michael Johnson - Cross

1 A. Yes.

2 Q. But you prepared that report on the 14th, two days later;
3 correct?

4 A. Yes.

5 Q. All right. Prior to preparing that report, you probably
6 talked to Agent Love; isn't that fair?

7 A. Yes.

8 MR. TANASI: Thank you. Nothing further.

9 THE COURT: Anyone else want to cross-examine Special
10 Agent Johnson?

11 Mr. Marchese.

12 MR. ENGEL: Yes, Your Honor.

13 MR. MARCHESE: I believe Mr. Engel is going to go.
14 I'll wait until after him.

15 THE COURT: All right. Mr. Engel.

16 CROSS-EXAMINATION

17 BY MR. ENGEL:

18 Q. Good morning.

19 A. Good morning.

20 Q. You stated that you were at post one approximately 11:15;
21 is that correct?

22 A. Yes.

23 Q. At 11:15, you begin to see vehicles pulling up on the
24 opposite side of both lanes of the highway; correct?

25 A. Yes.

Michael Johnson - Cross

1 Q. At 11:15 to 11:25, there were no law enforcement vehicles
2 parked in the median between the northbound lane and the
3 southbound lane; correct?

4 A. I don't recall.

5 Q. Can we go to that exhibit, please. 132. Exhibit 132 at
6 what would be 18:50 or 18:20?

7 MR. MARCHESE: 18:20.

8 (Exhibit 132 being played.)

9 BY MR. ENGEL:

10 Q. Brian, go until you see post one and the freeway, please.
11 Right there, please.

12 So, at 18:00, which would be 11:20 in the morning,
13 there is just two vehicles in the median; is that correct?

14 A. I see those.

15 Q. Okay. Go a little bit further, please, to -- I think it's
16 18:22, 18:25. Right there. A little bit further, please,
17 Brian. Right there. Back up a little bit. Back up just a
18 touch, please. Right there.

19 (Exhibit 132 being played.)

20 Q. It seems to be that the vehicles are no longer there; is
21 that correct?

22 A. You are talking about the police vehicles?

23 Q. The vehicles that were previously -- right there. Stop,
24 please.

25 A. I don't see them in the frame.

Michael Johnson - Cross

1 Q. So, would it be fair to assume that the people that were
2 parking across both lanes of freeway had direct access to come
3 towards post one?

4 A. Because it was unblocked.

5 Q. Unimpeded. There is no law enforcement standing between
6 post one and where the people are parking?

7 A. I don't see any barricades.

8 Q. So they -- once again, they had direct access to make a
9 left and come directly towards post one?

10 A. I am unaware if there were additional police officers that
11 were telling them to stay back. I -- I don't know.

12 Q. Okay. When you were at post one, you stated that you
13 observed people with weapons; is that correct?

14 A. Yes.

15 Q. At that time, did you begin to level your weapon and aim
16 it at those folks?

17 A. No, I did not.

18 Q. Did you not aim it at them because you didn't feel
19 threatened?

20 A. At that time, they were not aiming them at me.

21 Q. Okay. So you didn't feel that you needed to aim them
22 back; correct?

23 A. Correct.

24 Q. Okay. On the radio, you guys were calling out the
25 protests were moving down to the wash; is that correct?

Michael Johnson - Cross

1 A. I heard some traffic to that.

2 Q. And that would be approximately 11:35?

3 A. I -- I couldn't say exactly when it was.

4 Q. Okay. And at approximately 11:35, 11:40, everybody was
5 talking about protesters under the bridge; correct?

6 A. There was so much radio traffic, I can't recall an exact
7 time or exactly what was being said. There was nonstop radio
8 traffic.

9 Q. Did you hear over the radio when Agent Stover sent
10 officers into the wash?

11 A. I don't recall that.

12 Q. Okay. At 11:20, do you recall when the sheriff's deputy
13 arrived to post one and told you BLM officers to put away your
14 rifles?

15 A. No.

16 MR. DICKINSON: Objection. Hearsay or calls for
17 hearsay.

18 THE COURT: Do you want to rephrase that, Mr. Engel?

19 BY MR. ENGEL:

20 Q. Did you ever hear Sheriff Roberts tell you guys at the
21 post -- at post one to put away your rifles?

22 A. No, I did not.

23 Q. Do you recall, at 11:27 in the morning, a call coming over
24 the radio stating -- by your dispatch -- "Get your long guns
25 out of sight. They have enough."

Michael Johnson - Cross

1 A. No, I do not.

2 Q. From your position, were you able to see -- when you guys
3 moved over to -- when you moved out of post one and moved over
4 to the light tower, were you able to view the officers down in
5 the wash?

6 A. Yes.

7 Q. Were you able to view all the vehicles behind the officers
8 that were right up against the gate? The ones directly as they
9 were stacked up back there behind them?

10 A. I could see the vehicles.

11 Q. Okay. Do you recall Agent Love or Agent Stover ever
12 giving the order to escalate the situation?

13 A. No.

14 Q. Did Agent Love or Agent Stover ever give the order to aim
15 their weapons at the people in the wash?

16 A. I didn't hear that.

17 Q. At this time, were you ever given the authority to aim
18 your weapons at people under the wash by anybody?

19 A. No.

20 Q. Were you aware that the people in the wash heard over the
21 loudspeaker that you guys were going to shoot them?

22 MR. DICKINSON: Objection. Speculation.

23 THE COURT: The question was phrased properly. "Did
24 you ever hear," so I will allow it.

25 THE WITNESS: No, I did not.

Michael Johnson - Cross

1 BY MR. ENGEL:

2 Q. Was that you on the loudspeaker shouting that you would
3 shoot the protesters if they came forward?

4 A. No.

5 Q. Do you know who it was?

6 A. No, I do not.

7 Q. From your perspective, you could see post one -- post one
8 and behind post two; correct?

9 A. Yes.

10 Q. But you could not see in between the bridges?

11 A. No.

12 Q. Is that correct? Could not. So you could film everybody
13 on the northbound bridge; correct?

14 A. I was not filming.

15 Q. Agent Shilaikis standing next to you, was he filming?

16 A. He was filming back when we arrived the tractor. He was
17 not with me --

18 Q. Okay.

19 A. -- when I got to the generator light tower.

20 Q. Okay. Thank you. Did you -- at 11:53, did you see the
21 lady that left the wash, and went back to the parking area, and
22 yelled to the people in the parking area "The BLM is aiming
23 rifles at the people under the bridge"?

24 A. No, I did not.

25 Q. Go to 11- -- or 18:42, please. It may be on the next one,

Michael Johnson - Cross

1 Brian. 18:42. Right at the end. Right there where you have a
2 view of the northbound lane, please. There you go.

3 (Exhibit 132 being played.)

4 Q. So here at 18:42, there is nobody on the bridge; is that
5 correct?

6 A. I see one person.

7 Q. Okay. One person and one vehicle. So it would be safe to
8 stay there were no protesters on the bridge at that time?

9 A. I don't see a large group, no.

10 Q. And you can see the folks underneath the bridge; correct?

11 A. I can see them.

12 Q. Were you aware that at 11:41, your fellow officers at post
13 one -- at post two began aiming their weapons at the folks
14 under the bridge?

15 A. I did see my fellow officers aim their weapons towards
16 that area, as I also saw persons under the bridge --

17 Q. Excuse me, Officer. Just answer the question, please.

18 A. Okay.

19 Q. So at 11:41, you did -- you state that you did see your
20 officers -- your fellow officers aiming their weapons into the
21 wash area; correct?

22 A. I couldn't give a specific time. It was in that -- in
23 that time frame.

24 Q. Now, you also stated you didn't level your weapon at the
25 people pulling up across the road even though that they -- you

Michael Johnson - Cross

1 observed them having weapons; is that correct?

2 A. I did not point my weapon at anybody.

3 Q. So once again, you state you did not see the lady run down
4 the freeway at 11:53, and yell to everybody standing in the
5 parking area that the BLM is pointing rifles?

6 MR. DICKINSON: Objection, asked and answered.

7 MR. ENGEL: Okay. Sorry.

8 THE COURT: Sustained.

9 BY MR. ENGEL:

10 Q. So as we see here at 11:42, there's nobody on the bridge.
11 Can you fast forward to 11:54, please, Brian? I don't think
12 you are going to find it on this one. 11:54, please.

13 MR. GLYNN: 18:54?

14 (Exhibit 132 being played.)

15 BY MR. ENGEL:

16 Q. Yeah. I'm sorry. Try to go to where you see the bridge
17 or -- right there.

18 Q. Okay. It's difficult to see, Officer Johnson, but there
19 on the bridge, right in front of the semi-truck, do you -- can
20 you see where there's a large group of protesters standing?

21 A. Yeah. Right there?

22 Q. Yeah. Right there. Yes, sir.

23 A. I see those in the picture.

24 Q. So it would be safe to say that after the lady came down
25 to the parking area and yelled "The BLM is pointing rifles at

Michael Johnson - Cross

1 the people under the bridge" --

2 THE COURT: Mr. Engel, he's already stated --

3 MR. ENGEL: Sorry, Your Honor.

4 THE COURT: You're assuming facts that aren't in
5 evidence. There's been no evidence of that. He said he didn't
6 hear it, so you can't keep saying it as if it actually is a
7 fact.

8 MR. ENGEL: Yes, ma'am. Sorry.

9 THE COURT: Please rephrase.

10 BY MR. ENGEL:

11 Q. So at this time at 11:54, now there are people at the
12 bridge; correct? On the top of the bridge?

13 A. I see them.

14 Q. Okay. Can you fast forward, please, to 11:57? And let it
15 play a little bit, please, Brian.

16 (Exhibit 132 being played.)

17 Q. And ready to stop it right -- right there. Right there.
18 FBI Agent McEwen testified --

19 MR. DICKINSON: Objection to what somebody else
20 testified to, Your Honor.

21 THE COURT: Sustained.

22 BY MR. ENGEL:

23 Q. Agent Johnson, would you attempt to identify that vehicle
24 for us, please?

25 A. The white one or the --

Michael Johnson - Cross

1 Q. Yeah, the white one on the top side of the two vehicles.

2 A. It appears to be some sort of a police vehicle.

3 Q. So it would be safe to say that a police -- police
4 officers were amongst the people on the northbound bridge;
5 correct?

6 A. Yes.

7 Q. At approximately 12:00 p.m., the horses came down and went
8 underneath the northbound bridge. Is that -- would that be
9 safe to say?

10 A. I saw them when they were on the horizon, and then I lost
11 view of them when they went underneath.

12 Q. Okay. At this time, were you able to still see the agents
13 down at post one aiming their rifles in towards the wash area?

14 A. Are you talking about post two?

15 Q. Post two. Excuse me. I'm sorry.

16 A. I -- I saw them on a few different occasions. I can't say
17 exactly when it was.

18 Q. Okay.

19 A. As I was -- as I have stated earlier, I was scanning the
20 entire area for a long period of time.

21 Q. Thank you. At this time, do you recall seeing National
22 Park Service agents come around the side of their vehicle and
23 do what you gentlemen call a stack formation?

24 A. I -- I did see them down there in a group. I'm unaware of
25 their exact tactics.

Michael Johnson - Cross

1 Q. Okay. Can you go to Exhibit 257, please.

2 Would you recognize those gentlemen as being National
3 Park Service police that were on the side of their vehicle that
4 day?

5 A. I do recognize them as such.

6 Q. At approximately 12:00 p.m.?

7 A. I do not know the time.

8 Q. Okay. Thank you. Can you recall how long they held this
9 position?

10 MR. DICKINSON: Objection, Your Honor. He's
11 testified that he didn't see them in this position.

12 MR. ENGEL: Oh, sorry.

13 Q. Can you go to Exhibit 258, please, Brian.

14 From your position, Officer Johnson, could you see
15 these gentlemen?

16 A. I could see them from the side, not from -- not from this
17 position that this picture depicts.

18 Q. Okay. And you don't recall if you saw them take up this
19 position at 11:41 in the morning?

20 A. Not exactly.

21 Q. Let's move on from 12:00 p.m. to 12:16 p.m.

22 At 12:26, Special Agent in Charge Love approached the
23 gate; correct?

24 A. I'm not aware of the exact time.

25 Q. It's approximately.

Michael Johnson - Cross

1 A. Approximately.

2 Q. Okay. Thank you. Agent Stover at this time testified
3 that up to this point --

4 MR. DICKINSON: Objection about what another witness
5 testified about.

6 THE COURT: Sustained.

7 BY MR. ENGEL:

8 Q. At this time, were you able to observe Agent Love at the
9 gate?

10 A. I could not see him at the gate. I saw him approach the
11 area, but I couldn't see that far down in.

12 Q. Okay. So let's go to 12:24, please.

13 At this time, you see Tom Roberts and another deputy
14 arrive and start walking towards the gate?

15 A. I don't know Tom Roberts.

16 Q. The sheriff deputy for Las Vegas Metro?

17 A. I saw individuals approach the gate at varied times
18 throughout the entire afternoon.

19 Q. Okay. And at this time, were you still observing this
20 vehicle parked in this current position?

21 A. I don't -- I don't recall that from this view. I was in a
22 completely different view.

23 Q. So you couldn't see that vehicle?

24 A. I could see the vehicle. It was not from this
25 perspective. But I could see this vehicle, and I could see

Michael Johnson - Cross

1 these people.

2 Q. And you would state that it was still parked there at
3 12:24 when the sheriff deputies arrived; correct?

4 A. I am unaware of an exact time, but I did see that vehicle
5 in that area at that time.

6 Q. Okay. At approximately 12:27, Dave Bundy, Dan Love, and
7 Dennis Michael Lynch, a reporter, started -- had crossed over
8 the gate and started to walk towards post one; is that correct?

9 A. I didn't see them.

10 Q. All right. Let's back up a little to 12:18.

11 At approximately 12:18, you had -- still had a visual
12 of the northbound lanes; correct?

13 A. Yes.

14 Q. At approximately 12:18, did you see two Nevada Highway
15 Patrol trooper vehicles arrived on the northbound bridge?

16 A. I saw Nevada Highway Patrolmen in the area during the --
17 most of the time.

18 Q. Did you see them park amongst the protesters at
19 approximately 12:18?

20 A. I couldn't be that specific. I saw them in the area
21 during that time.

22 Q. And you stated that they got out of their vehicles -- out
23 of their vehicles and walked amongst the people?

24 A. I saw that.

25 Q. At this time, did you observe me seeking help from the

Michael Johnson - Cross

1 officers?

2 A. You yourself?

3 Q. Yes, sir.

4 A. I don't recall seeing you.

5 Q. So you don't recall seeing me on the bridge?

6 MR. DICKINSON: Objection. Asked and answered.

7 MR. ENGEL: Sorry, Your Honor. Sorry.

8 Q. Did you begin -- did you see them begin to assist the
9 protesters on the bridge?

10 MR. DICKINSON: Objection. By who?

11 BY MR. ENGEL:

12 Q. By highway patrol.

13 A. I couldn't see exactly what they were doing.

14 Q. But you stated that you saw them amongst us?

15 A. I saw them there, and I saw them walking around.

16 Q. So now we've seen Metro PD amongst the protesters up on
17 the bridge, and now we are seeing, about 20 minutes later,
18 highway patrol among the people on the bridge?

19 MR. DICKINSON: Objection, Your Honor. He said he
20 didn't see Metro PD on the bridge.

21 THE COURT: Sustained.

22 BY MR. ENGEL:

23 Q. You saw law enforcement vehicles amongst the people on the
24 bridge; correct?

25 A. I did.

Michael Johnson - Cross

1 Q. And now you have seen highway patrol park on the bridge,
2 get out of their vehicles, and walk amongst the people?

3 A. I saw Nevada Highway Patrol. I saw their vehicles. I saw
4 them amongst the people.

5 Q. Are you aware that the law enforcement officers that you
6 saw at 11:57 and at approximately 12:18 made no arrests that
7 day?

8 A. I am unaware.

9 Q. Are you aware that that vehicle was parked there with
10 those men aiming rifles at the people under the wash until
11 12:56?

12 MR. DICKINSON: Your Honor, these questions are
13 assuming facts not in evidence.

14 THE COURT: Sustained. You could just rephrase the
15 question. Instead of saying "Are you aware that they did
16 something?" you can say, "Did you ever see them doing
17 something?"

18 BY MR. ENGEL:

19 Q. Did you see this vehicle parked there until 12:56?

20 A. I can't specify a time, but I did see the vehicle in the
21 area during this event.

22 Q. Okay. Thank you. So at this time, you have stated that
23 you did not level your weapon at anybody at post one or post
24 two; correct?

25 MR. DICKINSON: Objection. Asked and answered.

Michael Johnson - Cross

1 THE COURT: Sustained.

2 BY MR. ENGEL:

3 Q. Officer Johnson, were you injured in any way on this day
4 physically?

5 A. No.

6 MR. ENGEL: Thank you, Your Honor. I have no more
7 questions.

8 THE COURT: Thank you, Mr. Engel.

9 Mr. Marchese?

10 MR. MARCHESE: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. MARCHESE:

13 Q. Good morning, sir. My name is Jess Marchese. I represent
14 Eric Parker, the gentleman in the blue shirt right there.

15 A. Good morning, sir.

16 Q. I am going to ask that --

17 Brian, can you get 132 up, please? This is an
18 exhibit that's been previously entered into evidence, and I
19 just want to use it to familiarize you with the area and where
20 you were on that day.

21 And while he gets there, I am going to ask you a
22 couple preliminary questions, sir.

23 So, on the 11th, you are working. April 11th, that
24 is 2014. You are working in an undercover capacity; fair to
25 say?

Michael Johnson - Cross

1 A. Me personally?

2 Q. Yes.

3 A. Yes, I was in plain clothes.

4 Q. Okay. An investigative unit, I believe, is the way you
5 had described it?

6 A. Yes.

7 Q. And was it you and four other officers or three other
8 officers?

9 A. I was the investigative team leader.

10 Q. Okay.

11 A. And there were -- are you referencing the four undercover
12 officers that went to the rally area?

13 Q. I have -- my notes indicate that there were four
14 undercover officers, and you had gone back to the ICP compound;
15 is that correct?

16 A. At what time?

17 Q. On April 11th, 2014. You went out to the hotel, and then
18 you came back; is that correct?

19 A. I'm not sure exactly what time of day you are referring
20 to.

21 Q. Okay. Did you make it to the ICP compound on the 11th?

22 A. Yes.

23 Q. Okay. What time did you go back?

24 A. In the evening time.

25 Q. Okay. Had you gone in any other time on that day?

Michael Johnson - Cross

1 A. I was there in the morning, I believe.

2 Q. Okay. So you were there or you weren't there in the
3 morning?

4 A. I believe I was. I can't say for sure. I don't know. I
5 don't remember where we started that day.

6 Q. All right. Long day. Correct?

7 A. Long day.

8 Q. I believe you had even said something to the effect of you
9 didn't sleep much?

10 A. The night of the 11th into the 12th, no, I did not.

11 Q. Okay. How about previous to that? Did you sleep?

12 A. I did.

13 Q. Okay. How much did you sleep on the 11th and the 12th?

14 A. I would say, at most, a couple hours.

15 Q. So it's a long day?

16 A. Very long day.

17 Q. So you were running on fumes?

18 A. I was tired, but I was doing well.

19 Q. Sure. You were awake, but you were tired. You like to
20 get a good night's sleep in a good bed; fair to say?

21 A. Fair to say.

22 Q. All right. So, you get back. And at some point in time,
23 I believe your testimony was about 11:30-ish, you get up to
24 post one; is that correct?

25 A. Approximately 11:15.

Michael Johnson - Cross

1 Q. 11:15. And then you were there for about 15 minutes, give
2 or take?

3 A. Give or take.

4 Q. And, of course, while this whole ordeal is going on,
5 you're not looking at your watch; right?

6 A. No, I am not.

7 Q. You are not taking notes, pulling out your cell phone,
8 checking the time. This is a guestimate; right?

9 A. Yes.

10 Q. Your mind was in other places, obviously?

11 A. Yes, it was.

12 Q. Now, I want to turn your attention to the screen here.
13 And Mr. Dickinson showed you some angles from here. You
14 recognize this area; correct?

15 A. I do.

16 Q. All right. So, you said at about 11:15, you got to a
17 particular area. Please put a one on the screen in the area
18 where you originally got to.

19 A. Is there any way to zoom in a little bit?

20 Q. Unfortunately, no. And this was the best overhead,
21 because I wanted to get the entire area.

22 Okay. So that's where you started out, and that's
23 when you were with Special Agent Shilaikis, I believe?

24 A. Yes, sir.

25 Q. Who else were you with at that time?

Michael Johnson - Cross

1 A. There were several other of the investigative team
2 members.

3 Q. Okay. Now, the invest -- who were the other investigative
4 team members that you were with? Was it all the people under
5 you that you were supervising?

6 A. Yes.

7 Q. And who were they again? I apologize.

8 A. They were -- I don't exactly remember when they came up,
9 if they came up exactly with me, a minute after, a minute
10 before.

11 Q. Sure.

12 A. But there were -- there was a Forest Service officer,
13 there was BLM Ranger David Russell. There was another Special
14 Agent in Charge Loren Good who had come up. There was -- there
15 was a number of us.

16 Q. Okay. And once again, this is not something that you are
17 writing down as you are going on.

18 A. No.

19 Q. You don't exactly know what's about to transpire, so you
20 are just kind of focusing on the situation at hand; fair to
21 say?

22 A. Fair to say.

23 Q. At some point in time, you and David Russell go back
24 towards post one and two in the wash; is that correct?

25 A. In between?

Michael Johnson - Cross

1 Q. Yes.

2 A. At the generator.

3 Q. Right. And can you put an X on the screen as to where you
4 would be at that point?

5 A. This -- I can approximate. This is so zoomed out that I
6 can't see exactly where it is.

7 Q. Okay. Please approximate.

8 Now, this particular terrain, would you -- you would
9 agree with me that from the freeway and down into the wash,
10 it's down at an angle. Is that fair to say?

11 A. Yes.

12 Q. Okay. Now, you prepared a memorandum -- a memorandum --
13 excuse me -- of activity in reference to this event and other
14 events that you perceived as a result of your investigation; is
15 that correct?

16 A. Are you referring to the one on the 14th?

17 Q. I was about to lay some more foundation to that, and there
18 was one specifically on April 14, 2014, that you prepared;
19 correct?

20 A. I recall it, yes.

21 Q. Okay. Now, this particular event occurred on April 12th
22 of 2014; correct?

23 A. Yes, it did.

24 Q. So, it was prepared two days after the event in question.
25 You would agree with me on that statement; correct?

Michael Johnson - Cross

1 A. I agree.

2 Q. Did you prepare any notes in which you used to prepare
3 your April 14th, 2014, memorandum of activity?

4 A. I did not.

5 Q. Okay. So basically, what you did is you went off your
6 memory?

7 A. Yes, I did.

8 Q. Okay. And as you have previously testified before, on
9 direct examination, this was a memorable event. You would
10 agree with me on that?

11 A. Yes.

12 Q. So, one of the things that I have here is that from your
13 perspective -- now, I'm talking about the second position by
14 the generator when you are with Mr. Russell.

15 From your perspective, it was difficult to see all
16 the areas of the wash; fair to say?

17 A. Fair to say.

18 Q. Okay. You could see where the law enforcement was,
19 because that was kind of, I guess, on your side of the road,
20 for lack of a better term?

21 A. Fair to say.

22 Q. Okay. And then in between the south and the northbound
23 bridges, that was a little more difficult. You couldn't see
24 everything in there due to the terrain, for lack of a better
25 term?

Michael Johnson - Cross

1 A. Correct.

2 Q. Okay. Now, as to the southbound bridge, could you see the
3 southbound bridge from where you were located?

4 A. I could see both.

5 Q. Okay. You could see both bridges. You would agree with
6 me though, that the area that you were in is actually at a --
7 somewhat of a lower elevation than the bridges; is that fair to
8 say?

9 A. I would say it's fairly even.

10 Q. It's even. Did you take any pictures that day from that
11 location?

12 A. I did not.

13 Q. Okay. And you were using binoculars; correct?

14 A. Yes, I was.

15 Q. You were with Special Agent Russell. Were you with anyone
16 else at that specific location?

17 A. No.

18 Q. Okay. So it was just the two you of in that immediate
19 area?

20 A. Yes. I was aware that people were working at a distance
21 behind me from time to time, but we were the only two there.

22 Q. You were the only two in that fixed position; correct?

23 A. Yes.

24 Q. People were coming and going. But for the most part,
25 that's your area, you and Mr. Russell?

Michael Johnson - Cross

1 A. Yes, it is.

2 Q. Okay. Now, you have -- you are obviously aware of your
3 memorandum of activity from that day, because you were the one
4 who told me about it?

5 A. Yes, I am.

6 Q. And I would also -- is it fair to say that you knew you
7 were coming to court today; correct?

8 A. Yes.

9 Q. So you have probably reviewed it just to freshen up. It's
10 almost three years after the incident; correct?

11 A. I have.

12 Q. And you've probably met with Mr. Dickinson just to kind of
13 go over the expectations of what he might ask you and things
14 like that in this proceeding here today; fair to say?

15 A. Fair to say.

16 Q. All right. Isn't it true that in your memorandum of
17 activity, that you said that due to the distance between my
18 position and the persons and vehicles I was observing, I was
19 unable to identify individual persons; is that correct?

20 A. Specifically, yes.

21 Q. Okay. And specifically, you also write in that memorandum
22 of activity that you couldn't identify any clothing patches on
23 these persons; is that fair to say?

24 A. Fair to say.

25 Q. Okay. You also testified, on direct examination, that

Michael Johnson - Cross

1 there were numerous people in that area wearing all types of
2 military fatigues; is that correct?

3 A. Correct.

4 Q. But there were also a lot of people wearing all sorts of
5 casual clothing as well; correct?

6 A. Yes, there was.

7 Q. Now, there was some testimony in reference to what you
8 classified as a sniper and a spotter; correct?

9 A. Yes.

10 Q. Okay. And it was your belief that they were a sniper and
11 a spotter were based upon several things. One was that you saw
12 one of the individuals with an assault-style rifle; correct?

13 A. Correct.

14 Q. Did the other individual have an assault-style rifle?

15 A. No.

16 Q. Okay. It was your testimony that you believed that they
17 were working in concert together; correct?

18 A. Yes.

19 Q. Okay. You have no personal knowledge of who those
20 individuals are; is that correct?

21 A. That is correct.

22 Q. Okay. You don't know if those individuals know each
23 other; isn't that correct?

24 A. I do not know.

25 Q. To your personal knowledge, you don't know -- strike that.

Michael Johnson - Cross

1 There were also -- if you look at this northbound
2 bridge, you would agree with me, from looking at the exhibit
3 and from what you personally perceived on the date in question,
4 that there were several people on the northbound bridge; is
5 that correct?

6 A. Correct.

7 Q. Which side of the bridge was -- were the two located --
8 the two individuals located on? And what I mean by that is
9 where was the sniper in referenced to alleged spotter?

10 A. Well, they were -- they were right next to each other.

11 Q. Okay. Who was on which side?

12 A. The -- from my perspective, the spotter was on the left
13 and the sniper was on the right.

14 Q. Okay. And in your memorandum of activity, you have given
15 no description whatsoever of their clothing; correct?

16 A. Correct.

17 Q. You also indicated that the alleged sniper laid down on
18 the road; is that correct?

19 A. I saw him drop below the concrete barricade.

20 Q. Okay. But you have no idea what he was actually doing
21 behind the concrete barrier; correct?

22 A. I could not see him.

23 Q. I mean, I'm sure you are very good at your job, but you
24 can't see through concrete; fair to say?

25 A. Fair to say.

Michael Johnson - Cross

1 Q. Okay. You also indicated, on direct examination, that at
2 some point in time, the alleged sniper pointed his weapon at
3 you; is that correct?

4 A. I did not specifically say that sniper pointed his weapon
5 at me.

6 Q. Okay. Someone did?

7 A. I did not say that I saw anybody pointing a weapon at me.

8 Q. No one pointed his weapon at you on that day?

9 A. I saw weapons pointed at my fellow officers, but I did not
10 see someone point a weapon at me.

11 Q. Okay.

12 A. I saw the spotter point his range finder at me.

13 Q. Would you agree that that was probably the most memorable
14 portion of that day was when the weapons were pointed at your
15 fellow officers?

16 A. I would say it was one of the top ones.

17 Q. Okay. And isn't it true that in your memorandum of
18 activity, you made no mention of a sniper pointing a weapon at
19 your fellow officers?

20 A. I did not.

21 MR. MARCHESE: Pass the witness, Your Honor.

22 THE COURT: Mr. Jackson?

23 CROSS-EXAMINATION

24 BY MR. JACKSON:

25 Q. Thank you. Good morning, Officer.

Michael Johnson - Cross

1 A. Good morning.

2 Q. My name is Terrence Jackson. I represent Gregory
3 Burleson.

4 Had you had any contact with Mr. Burleson prior to
5 April 12 of 2014?

6 A. None.

7 Q. Okay. You were at the scene, you stated, on April 12th,
8 2014. Was it a very noisy, chaotic scene?

9 A. It was.

10 Q. Could you hear anything that the various civilian
11 protesters were saying while you were at the scene?

12 A. I could not.

13 Q. How far away were you from the civilian protesters that
14 were there? Was it 50 yards, a hundred yards, 75 yards? How
15 far?

16 A. It was a couple hundred yards.

17 Q. So you were -- you were far enough away you couldn't
18 identify anyone. You could only see through your binoculars
19 that there were people, but you weren't close enough to
20 recognize any actual physical characteristics of them; is that
21 correct?

22 A. I could see them, yes. But I did not recognize any of the
23 people specifically.

24 Q. All right. So you could see they were people. Could you
25 tell whether it was a man or a woman? Were you close enough to

Michael Johnson - Cross

1 see that?

2 A. Yes.

3 Q. You were -- you could hear there was a lot of noise coming
4 from the -- from the area where the -- where the people were;
5 is that correct?

6 A. Which area?

7 Q. What?

8 A. Which area?

9 Q. Could you hear -- could you hear noise from the people
10 yelling and screaming? Anything like that?

11 A. It -- I -- I don't recall hearing loud screaming, no.

12 Q. Okay. Could you hear a bullhorn? Could you hear noise
13 from a bullhorn set off by the -- from the BLM or from any of
14 your agencies?

15 A. No, I couldn't hear it.

16 Q. Okay. Now, you were never told to get closer to this
17 scene because of -- it degenerated so much that there was
18 enough danger that they needed you closer to provide greater
19 protection to the agents that were closer to the scene; is that
20 correct?

21 A. I was given my assignment to go to the area that I went
22 to.

23 Q. You were never told to advance closer than 200 yards to
24 the scene; is that correct?

25 A. I was told to go to the area that I went to. There were

Michael Johnson - Cross

1 others that were -- that got orders to go down into the wash.

2 Q. Now, the question is, you were never told, during that
3 time period, go closer than 200 yards to the wash; is that
4 correct?

5 A. I -- after I got there, no.

6 Q. Okay. And you were there for approximately two hours
7 before you were told to pack up and leave?

8 A. All approximate times, yes.

9 Q. All right. Your putative supervisor during that time was
10 Mr. Love. He was the agent in charge?

11 A. He was.

12 Q. Did you have direct contact with him while you were at the
13 scene?

14 A. No, I did not.

15 Q. Now, you said you saw highway patrol officers at the
16 scene. How many highway patrol officers did you see
17 approximately?

18 A. It was a few. I don't -- I don't recall a number.

19 Q. Okay. And you -- it seemed to you that the highway patrol
20 officers were wandering around close to the protesters, going
21 in and out among them; is that correct?

22 A. It is. They were intermingled.

23 Q. And that disturbed you in some way?

24 A. It confused me.

25 Q. They seemed to be not afraid at all of the protesters?

Michael Johnson - Cross

1 A. I couldn't tell what they were thinking.

2 Q. Now, did you see any metropolitan police officers on the
3 scene?

4 A. I saw them immediately at post one, but I don't recall
5 them out on the -- on I-15.

6 Q. Do you know what the uniform of the metropolitan police
7 officers looks like?

8 A. I do.

9 Q. You weren't aware of metropolitan police officers at the
10 scene anywhere in your line of vision?

11 A. They -- they were at post one. I knew that. But I was --
12 I saw them when I was at post one, and then I didn't see them
13 after I was at the generator. I don't recall seeing them.

14 Q. You didn't see any of them among the crowd of people down
15 in the wash, or you couldn't actually see down in the wash; is
16 that correct?

17 A. I could see down into the wash, and I did see uniformed
18 officers that were not BLM or park police that were down there.
19 But I don't know exactly who they were.

20 Q. Okay. And you don't -- and you don't know if you saw
21 metropolitan police officers down there?

22 A. I -- no, not for sure. I believe there was a couple of
23 them that had approached the -- the wash area, yes. But I -- I
24 do not know any metropolitan police officers.

25 Q. Did you have any -- any communication at all with any park

Michael Johnson - Cross

1 police?

2 A. I did not.

3 Q. And I assume you didn't have any communication then with
4 any metropolitan police officers either; is that correct?

5 A. I did not.

6 Q. So, you were pretty much covering the rear of this
7 operation, way back -- the rear of this whole operation that
8 was going on, was that your function?

9 A. Unclear. The rear of the operation?

10 Q. Well, you were -- you were the far end of this whole area;
11 wouldn't that be fair to say? You weren't in the middle of
12 this operation that was going on here in the wash; is that
13 correct?

14 MR. DICKINSON: Objection to operation. Is he --
15 BY MR. JACKSON:

16 Q. All right. I will rephrase the question. I will withdraw
17 the question.

18 From the distance of 200 feet -- or, excuse me --
19 200 yards, you felt great fear?

20 A. I did.

21 Q. And the people that were closer -- the law enforcement
22 officers from the highway patrol and the metropolitan police,
23 did any of them pull out their guns and point them at the
24 civilians, either with or without guns?

25 A. You are talking about the Nevada Highway Patrol?

Michael Johnson - Cross

1 Q. Yes.

2 A. I didn't see them do that.

3 Q. Or the metropolitan police department officers?

4 A. I didn't see that.

5 Q. Based on that, did you conclude that they were in great
6 fear as well even though they were closer than you?

7 A. I --

8 MR. DICKINSON: Objection. Speculation and the
9 witness has already testified he didn't know what other
10 officers thought.

11 MR. JACKSON: Okay. I will withdraw the question. I
12 have no further questions.

13 THE COURT: Thank you, Mr. Jackson.
14 Mr. Leventhal?

15 MR. LEVENTHAL: Thank you, Judge.

16 CROSS-EXAMINATION

17 BY MR. LEVENTHAL:

18 Q. Good morning. My name is Todd Leventhal, and I represent
19 Mr. Drexler.

20 I'm going to take you back to yesterday in your
21 testimony with the government. You -- you indicated that you
22 were assigned to -- first to go meet up with Cliven Bundy on --
23 I believe you said March 17th; correct?

24 A. Correct.

25 Q. And you did so at the direction of Special Agent Love?

Michael Johnson - Cross

1 A. Yes, I did.

2 Q. Your commander?

3 A. Yes, I did.

4 Q. And you indicated that the Bundys had issues or problems
5 in the past with the cows. Could you tell me what specific
6 issues that they had that caused you to go see Mr. Bundy on
7 March 17th?

8 A. I had been told by Mr. Love that there had been previous
9 attempts to gather the cattle that were unsuccessful.

10 Q. Did he indicate to you why they were unsuccessful?

11 A. They were -- it was my understanding that there were
12 conflicts between the Bundy family, the courts, and the BLM.

13 Q. Okay. Did you ever know that prior to -- was there ever a
14 protest of any sort out there prior to when the BLM began to
15 gather his cattle?

16 A. I'm unaware of them.

17 Q. I apologize?

18 A. I am unaware if there was.

19 Q. Okay. So, let me take you to March 17th. Now, you
20 indicated that you and Special Agent Shilaikis; correct?

21 A. Shilaikis.

22 Q. Now, he's from Colorado?

23 A. He is.

24 Q. And you are from Utah?

25 A. I am.

Michael Johnson - Cross

1 Q. And Special Agent Shilaikis and yourself, you guys came
2 out to Nevada; correct?

3 A. We did.

4 Q. And you indicated the purpose was to mediate and to keep
5 problems from occurring. That is what I wrote. Is that still
6 correct? Is that still your testimony?

7 A. That's correct.

8 Q. Okay. So you started out in Bunkerville and you went over
9 to the Bundy's home; correct?

10 A. We did.

11 Q. And you indicated nobody was home?

12 A. No one.

13 Q. So then you went and you called the cellular; correct?

14 A. We did.

15 Q. You didn't get an answer; did you?

16 A. No answer.

17 Q. But you left a message; correct?

18 A. We did.

19 Q. So you then went to go see Ranger Sullivan?

20 A. We did.

21 Q. You found Ranger Sullivan?

22 A. Yes, she was already in the area.

23 Q. Okay. And she led you to Duke, Duke Clancy, I believe you
24 indicated; correct?

25 A. Duke Clancy Cox.

Michael Johnson - Cross

1 Q. Okay. And so you went out to meet up with Duke Clancy
2 Cox. You were looking for the Bundys, but he was what you
3 found; correct?

4 A. It was a chance encounter, yes.

5 Q. Okay. You indicated to him to have one of the Bundys call
6 you; correct?

7 A. We first asked him if he would call Cliven Bundy.

8 Q. Okay.

9 A. Which he did. And Mr. Bundy declined to meet with us.

10 Q. Okay. But you got a message to him that you were looking
11 for Cliven Bundy; correct?

12 A. We did.

13 Q. Okay. So still you haven't found Mr. Bundy or the Bundys,
14 so then you went to Mesquite; correct?

15 A. We did.

16 Q. Okay. And in Mesquite, you were looking for Dave?

17 A. We were.

18 Q. Okay. Couldn't find Dave; could you?

19 A. No.

20 Q. So you went over to St. George, Utah, that day; correct?

21 A. Correct.

22 Q. And you indicated you went to a P.O. box; correct?

23 A. It was a mail parcel store --

24 Q. Okay.

25 A. -- that had P.O. boxes.

Michael Johnson - Cross

1 Q. And the employee there, I assume, provided the information
2 on Dave's residence; correct?

3 A. He did. She did.

4 Q. She did.

5 A. I think it was a she. Yes.

6 Q. Now, how -- is that public information or did you have to
7 flash your badge or something to get that?

8 A. We identified ourselves as BLM law enforcement and asked
9 for it.

10 Q. Okay. You didn't have a warrant of any sort; did you?

11 A. We didn't.

12 Q. No court order; did you?

13 A. We did not.

14 Q. Okay. And she freely provided you an address; right?

15 A. She did.

16 Q. That address turned out to be Dave Bundy's wife's sister's
17 house Lora Lee; correct?

18 A. Correct.

19 Q. And she indicated she didn't know anything?

20 A. She didn't know any --

21 Q. Didn't know anybody? Didn't know the Bundys? Didn't know
22 anything; right?

23 A. Didn't know Dave, didn't know the Bundys, and she shut the
24 door on us.

25 Q. Okay. So now tracking Dave Bundy down was futile, so now

Michael Johnson - Cross

1 you are looking for Ryan; correct?

2 A. We made one additional attempt to contact Ryan via the
3 phone number.

4 Q. Okay. And so you went from St. George, and you drove up
5 to Cedar City?

6 A. We did.

7 Q. And you went to his house; correct?

8 A. We drove by his house.

9 Q. And you indicated there were too many cars out there, so
10 you didn't want to go up there; did you?

11 A. Cars and persons.

12 Q. Okay. So you indicated that you met up with the Cedar
13 City Police Department Officer Smith?

14 A. Yes, sir.

15 Q. He contacted Ryan?

16 A. Yes, he did.

17 Q. You heard that conversation?

18 A. It was on speaker phone.

19 Q. You went back to your hotel that night?

20 A. We did.

21 Q. And then you got a call from Ryan; correct?

22 A. That's correct.

23 Q. Okay. Seems like a long itinerary. Did you feel like you
24 were you stalking them at some point?

25 A. No.

Michael Johnson - Cross

1 Q. You must have had a very urgent message to get to them.
2 That's quite a bit to get to them; don't you think?

3 A. We were going from person to person.

4 Q. Okay.

5 A. When we couldn't contact one, we would go to the next.

6 Q. And all this was to mediate; correct?

7 A. Was to discuss the impending gather and offer any help or
8 any mediation that we could provide.

9 Q. Okay. Now, we heard your conversation with Mr. Bundy
10 yesterday. Do you remember that conversation?

11 A. I do.

12 Q. And we heard over and over, at least I think I counted,
13 eight times where you indicated that we are coming. Did you
14 hear that?

15 A. Yes.

16 Q. Did you hear that you indicated that I'm telling you, we
17 will show up. Did you indicate that? Did you hear that?

18 A. Yes.

19 Q. And then over and over "We are coming"; correct?

20 A. I don't recall a number. But, yes, I did say that.

21 Q. Okay. Now, you were hired on, you indicated, as
22 countersurveillance; right?

23 A. Hired on --

24 Q. Or you were brought on to this mission as
25 countersurveillance; correct?

Michael Johnson - Cross

1 A. That was one of our assignments.

2 Q. Okay. And so -- and I agree there was multiple sort of
3 assignments within that. There's the cows; correct?

4 A. Correct.

5 Q. And then there's the intel or the countersurveillance;
6 correct?

7 A. Correct.

8 Q. Okay. And so you were out there to do the intel, if you
9 will, or the countersurveillance. And Agent Stover
10 indicated -- and if you disagree with this, let me know --
11 that --

12 MR. DICKINSON: Objection about what another witness
13 testified.

14 MR. LEVENTHAL: Your Honor, there is nothing wrong
15 with what another witness testified to under oath here in
16 court. That's why we have the exclusionary rule. And if I'm
17 wrong, this jury will know what they said.

18 MR. DICKINSON: It absolutely is incorrect.

19 MR. LEVENTHAL: Absolutely not.

20 THE COURT: It is. Sustained. Rephrase your
21 question.

22 BY MR. LEVENTHAL:

23 Q. Okay. If Agent Stover came in here and indicated that
24 there was two parts --

25 MR. DICKINSON: Objection. Same objection, Your

Michael Johnson - Cross

1 Honor.

2 MR. LEVENTHAL: I am asking --

3 MR. DICKINSON: Improper.

4 THE COURT: You have to change the form of the
5 question.

6 BY MR. LEVENTHAL:

7 Q. Okay. If there were two -- do you agree that there were
8 two parts of this or three parts; one intel and one cows;
9 correct?

10 A. Of what?

11 Q. Of this mission.

12 A. My mission?

13 Q. The mission, the whole mission.

14 A. I couldn't divide it up into -- into parts of the mission.

15 Q. Okay. Did you -- before you went through this, you had a
16 list of people or threat assessments. Did you -- were you
17 aware of those threat assessments?

18 A. For -- I'm unclear what you are asking.

19 Q. Okay. When you started this assignment prior -- after
20 March, after you saw the Cliven Bundys and you announced you
21 were coming, did you have a list of people with you that you
22 were looking for or that you were getting ready to find or
23 pictures of certain people? Threats, if you will?

24 A. I don't recall that.

25 Q. You don't? You don't recall?

Michael Johnson - Cross

1 A. Me personally?

2 Q. You personally, yeah. You were in charge of the
3 countersurveillance; correct?

4 A. Correct. I don't recall that. I don't recall having
5 pictures of persons we were looking for.

6 Q. No? A list of names?

7 A. We -- I knew a list of names, because I had been in
8 contact -- attempted to contact several of the Bundy family
9 members.

10 Q. Were there other people other than the Bundy family
11 members that you had a list of?

12 A. I don't recall that.

13 Q. You don't recall? So there was nobody other than the
14 Bundys that you would have identified to be some sort of a
15 threat?

16 A. I recall that as the gather progressed, there were
17 individuals that were being identified by -- I mean, several
18 groups of -- I mean, different groups of BLM officers and
19 agents, yes.

20 Q. Okay. So, you were identifying people through the
21 arrests; is that what you are indicating?

22 A. Not just that. Just through license plate numbers.

23 Q. Okay.

24 A. And persons that were contacting us at post one.

25 Q. Okay. But there was no list, to your knowledge, that was

Michael Johnson - Cross

1 there prior to the actual impound? The start of the impound?

2 A. I don't recall that.

3 Q. You don't recall that?

4 A. No.

5 Q. Okay. You've had special training in -- you indicated
6 that you had special training when you were with the Secret
7 Service; correct?

8 A. Yes.

9 Q. 10 weeks of training?

10 A. Much more than that.

11 Q. Much more than that. Now, you indicated at BLM, you
12 haven't had any training. It's on the job; right?

13 A. We attend an annual 40-hour training every year.

14 Q. Okay.

15 A. And we're admitted or allowed to attend other training
16 courses as needed.

17 Q. And you indicated that you have served search warrants;
18 correct?

19 A. I have.

20 Q. Okay. Now, how often in your search warrants prior, do
21 you alert people that you're coming? Have you ever done that
22 before?

23 A. You don't alert them.

24 Q. You don't; do you?

25 A. No.

Michael Johnson - Cross

1 Q. You don't alert people that you are coming?

2 A. It's not custom --

3 Q. I'm sorry. There's no -- it's not normal; right?

4 A. No.

5 Q. Okay. But you were told to do it in this instance?

6 A. What's that?

7 Q. To alert the Bundys you were coming?

8 A. Yes.

9 MR. LEVENTHAL: Okay. I have nothing further. Thank
10 you.

11 THE COURT: Mr. Perez?

12 CROSS-EXAMINATION

13 BY MR. PEREZ:

14 Q. Good afternoon, Agent.

15 A. Good morning.

16 Q. My name is Shawn Perez, and I represent Ricky Lovelien.

17 Are you familiar with Mr. Lovelien?

18 A. I am not.

19 Q. I was looking at your report, and you were using Swarovski
20 8x56 binoculars?

21 A. Yes.

22 Q. And you understand how binoculars work?

23 A. Yes, I believe so.

24 Q. Okay. Now, as far as that number eight --

25 A. That's the --

Michael Johnson - Cross

1 Q. -- what does that represent when you are talking about
2 8x56?

3 A. Eight is the number of optical magnifications to the naked
4 eye. Eight times --

5 Q. And so --

6 A. -- what the naked eye could see.

7 Q. So, whatever I can see with the naked eye, that will help
8 me see it eight times clearer, bigger?

9 A. Eight times closer.

10 Q. Closer. Okay. And from your vantage point, when you said
11 that you observed someone with their range finder, what was the
12 distance that you were at?

13 A. It was several hundred yards.

14 Q. Okay. And you said that you've used range finders and --
15 for hunting or in your line of work. How big is a range
16 finder?

17 A. It's approximately that big.

18 Q. Okay. So indicating a size of what? Like 4 inches by --

19 A. Probably 4 to 5 inches.

20 Q. So, you saw -- obviously, you couldn't see any markings on
21 the side of the range finder?

22 A. No, I couldn't see any markings.

23 Q. Okay. You said you also couldn't detect what people were
24 wearing?

25 A. I think I said --

Michael Johnson - Cross

1 Q. Like clothing?

2 A. -- specific patches.

3 Q. Okay.

4 A. Specific identifiers that would identify a person with a
5 group.

6 Q. You couldn't identify any faces?

7 A. No.

8 Q. Okay. Now, do you have a video camera?

9 A. Do I personally have one?

10 Q. Yeah. Have you ever seen a video camera?

11 A. Yes.

12 Q. Okay. Aren't they about this size as well?

13 A. Yes.

14 Q. Okay. I am -- that's approximately what? 4 by 6? I
15 guess if you had a GoPro, it would be a little smaller than
16 that?

17 A. Uh-huh.

18 Q. Correct?

19 A. It's possible.

20 Q. Right. So, at a range of 200 yards or -- plus or minus;
21 right? Maybe more?

22 A. A few hundred yards.

23 Q. Okay. Well, do you know the approximate distance between
24 the bridges?

25 A. I don't.

Michael Johnson - Cross

1 Q. Would it be fair to say that it's less than a hundred
2 yards?

3 A. I do not know.

4 Q. Okay. Well, at that distance at 200 yards --

5 A. 200 yards was the distance that they asked me what was my
6 closest proximity to persons.

7 Q. Okay.

8 A. These persons that I'm referring to were beyond 200 yards.
9 A few hundred yards.

10 Q. So they were farther away than 200 yards?

11 A. Yes.

12 Q. And so you could detect something approximately
13 4-by-6 inches to be a range finder as opposed to being maybe a
14 cell phone?

15 A. With my binoculars and given my experience in utilizing a
16 range finder, I recognized the motion and the -- in which that
17 person was using to be very specific to someone using a range
18 finder.

19 Q. Can you demonstrate for me what the motion?

20 Okay. That would be similar to a video camera;
21 correct?

22 A. I haven't seen people use video cameras up that close to
23 their face.

24 Q. Well, at 200 plus yards, even through your 8x56 Swarovski
25 binoculars -- which are very good binoculars --

Michael Johnson - Redirect

1 A. Yes, they are.

2 Q. -- you couldn't tell how close that was to his face; could
3 you?

4 A. I could see it right up to his face.

5 Q. Well, do you know what the distance it was between the --
6 I mean, does he use, like, an eye piece?

7 A. It has a small eye piece. Most of them have a small eye
8 piece.

9 Q. Some video cameras have a small eye piece, too; do they
10 not?

11 A. They do.

12 Q. So, is it fair to say that it's possible it was a video
13 camera?

14 A. It's possible.

15 MR. PEREZ: Okay. I have nothing further.

16 THE COURT: I think everyone has had an opportunity
17 to cross-examine; right?

18 Okay. Any redirect, Mr. Dickinson?

19 MR. DICKINSON: Yes, Your Honor.

20 REDIRECT-EXAMINATION

21 BY MR. DICKINSON:

22 Q. Special Agent Johnson, Mr. Engel asked you some questions.
23 He went over a lot of times with you.

24 You generally testified that you were up again at
25 post one at about 11:15; correct?

Michael Johnson - Redirect

1 A. Yes, sir.

2 Q. Were there for 15 minutes, and then went to where you were
3 for the remainder until you were told to report back, and then
4 everybody left?

5 A. That is correct.

6 Q. To be clear, were you watching -- were you recording
7 things --

8 A. No.

9 Q. -- time-wise?

10 A. No.

11 Q. So you weren't keeping track of time?

12 A. No.

13 Q. So any specific things that were shown to you, do you have
14 any idea if the times were accurate?

15 A. I do not.

16 Q. So, for example, could we pull up Government Exhibit 258?

17 Do you have any idea when this was captured?

18 A. I --

19 Q. Time-wise?

20 A. No, I do not.

21 Q. All right. You can take it down.

22 You had some questions about -- Mr. Engel asked you
23 some questions about raising or pointing your weapon. When you
24 got -- how did -- where was your sidearm? How was your sidearm
25 on you?

Michael Johnson - Redirect

1 A. It's on my belt.

2 Q. The whole time?

3 A. The whole time.

4 Q. And your long gun, where was that when you were at post
5 one?

6 A. It was over my shoulder on a sling.

7 Q. And when you moved to the light post where you were the
8 remainder of the time, where was your weapon?

9 A. It started on a sling over my shoulder, and then as time
10 went on, I laid it down on the ground.

11 Q. And Mr. Engel asked you a lot of questions about the
12 officers that you could see when you were scanning the crowd.

13 During that two-hour period, hour and a half,
14 two-hour period, where was your primary focus of what you were
15 looking at either with your normal vision or your binoculars?

16 A. It was between the bridges and down in the wash.

17 Q. So you weren't just focused on what your fellow officers
18 were doing in the wash?

19 A. No.

20 Q. You were asked, again by Mr. Engel, several questions
21 about your fellow officers and whether you saw them pointing
22 weapons and when. You don't know when; correct?

23 A. I do not.

24 Q. But you did see weapons being, what you would say, pointed
25 by your fellow officers?

Michael Johnson - Redirect

1 A. I did.

2 Q. You testified that based on your view -- correct me if I'm
3 wrong -- you couldn't see anything in the wash itself in
4 between the two bridges?

5 A. No, I cannot.

6 MR. MARCHESE: Objection. Leading.

7 BY MR. DICKINSON:

8 Q. Could you see anything in the wash between the two
9 bridges?

10 A. No.

11 Q. So did you have a view of what those officers in the wash
12 were seeing when they were looking towards --

13 MR. MARCHESE: Objection. Speculation.

14 THE COURT: The question was "could he see." I will
15 allow it. Overruled.

16 THE WITNESS: Could you say it again, please?

17 BY MR. DICKINSON:

18 Q. Could you -- could you see what the officers in the wash
19 were seeing when they were looking between the bridges?

20 A. No, I could not.

21 Q. So you have no idea what they were -- what they observed,
22 threats, no threats, or anything that they observed?

23 A. I could not see that.

24 Q. Of why they possibly would have raised their weapons?

25 A. Correct.

Michael Johnson - Redirect

1 Q. You were asked some questions about the NHP first that you
2 saw walking around, and your answer was you were confused?

3 A. Yes.

4 Q. And you stated that you didn't see anybody get arrested?

5 A. I did not.

6 Q. Based upon what you observed, your observation, your
7 training and experience, do you feel like the officers you saw
8 on that bridge could have effectuated an arrest safely?

9 MR. LEVENTHAL: Objection. It calls for speculation.

10 MR. MARCHESE: Join.

11 MR. TANASI: Join.

12 MR. DICKINSON: It's the officer's observation of
13 what he was seeing, Your Honor.

14 THE COURT: All right. I will allow it in a limited
15 way. Go ahead.

16 THE WITNESS: They could have effected arrests should
17 they have chosen to.

18 BY MR. DICKINSON:

19 Q. Do you have an idea -- did you ever talk to them? Do you
20 have any idea of what they were doing?

21 A. I have never spoken to them.

22 Q. Or why they acted one way or the other?

23 A. I do not. No.

24 Q. Mr. Leventhal asked you some questions about a search --
25 search warrants and officers don't usually announce when they

Michael Johnson - Redirect

1 are giving search warrants; correct?

2 A. Correct.

3 Q. When you went out to talk to the Bundys, was it clear that
4 they knew that the cattle impoundment was coming?

5 MR. LEVENTHAL: Objection. Calls for speculation.

6 THE COURT: Overruled. He can answer the question.

7 BY MR. DICKINSON:

8 Q. Were you aware that the Court orders had issued when you
9 went to talk to the Bundys?

10 A. I was aware they had been issued.

11 Q. And based on what you knew, were aware that that was
12 public information?

13 A. Yes. I believed I was clear in my intentions to Ryan
14 Bundy.

15 Q. And those intentions again were?

16 A. That we were going to come gather the cattle, and that we
17 did not want any problems. And if there was anything we could
18 do to mediate that, I would -- I would have liked to talk about
19 it.

20 Q. You were asked several questions about your perception. I
21 think you were pretty clear, but you could identify
22 individuals; correct?

23 Could you identify individuals on the bridge?

24 A. By --

25 Q. Both the north and southbound bridge?

Michael Johnson - Redirect

1 A. I could see -- I could identify people, yes.

2 Q. And could you identify, based on your training and
3 experience, what you believed were weapons?

4 A. Yes.

5 Q. And could you identify sex of individuals?

6 A. Yes.

7 Q. But you couldn't -- could you identify patches on their
8 clothing?

9 A. No.

10 Q. And could you identify people well enough to, say, a few
11 days later pick them out of a photo lineup?

12 MR. TANASI: Objection, Your Honor. Leading.

13 MR. MARCHESE: Parker join.

14 THE COURT: Asked and answered. Overruled.

15 BY MR. DICKINSON:

16 Q. You were asked by -- Mr. Engel and Mr. Jackson several
17 times referenced or used the term "protesters."

18 Based on your training and experience, have you been
19 around -- well, before I ask that, based on your work with the
20 Secret Service, have you observed protests?

21 A. Yes.

22 Q. Approximately how many?

23 A. Dozens.

24 Q. And how about with the BLM?

25 A. A few.

Michael Johnson - Redirect

1 Q. And based upon what you observed that day, did you observe
2 any protesters?

3 A. I -- that was not a protest to me.

4 Q. And why is that?

5 A. Because they were -- they were carrying weapons. They
6 were pointing weapons. They were using the tactics I described
7 as a spotter and the shooter, and that's it.

8 MR. DICKINSON: One second, Your Honor.

9 THE COURT: Actually, we are going to go ahead and
10 take a break here. Let everyone use the restroom and stretch.

11 I do remind the jury during this time not to discuss
12 this case with anyone nor permit anyone to discuss it with you.
13 As always, please let the Court know right away if you
14 inadvertently hear anything about the case.

15 And please do not read or listen to or view anything
16 touching upon the case. Do not attempt to perform any research
17 or any independent investigation about the case, and do not
18 form any opinion about the case until after you have heard all
19 of the evidence, the closing arguments, been provided with the
20 written jury instructions of law, and then been released to
21 begin your deliberation process.

22 We will go ahead and take about -- what do we need to
23 do, Aaron, 20 minutes?

24 COURTROOM ADMINISTRATOR: About 20 minutes, Your
25 Honor.

Michael Johnson - Redirect

1 THE COURT: All right. We will take a 20-minute
2 break and be back here about 10:20. Please stand for the jury.

3 And after they have exited, then, Special Agent
4 Johnson, you can take your restroom break here as well.

5 Please be back here at 10:20.

6 THE WITNESS: Thank you, Your Honor.

7 (Jury out.)

8 THE COURT: All right. The jury has left. The door
9 is closed.

10 Miss Dickinson, are you here to escort Mr. Leventhal?

11 MS. DICKINSON: Yes, Your Honor.

12 THE COURT: All right. We will be back here at
13 10:20.

14 COURTROOM ADMINISTRATOR: Off the record.

15 (Recess 10:01 a.m. Resumed 10:27 a.m. Jury out.)

16 THE COURT: You can go ahead and sit down until he
17 comes back through the door, and he'll say all stand.

18 (Jury in.)

19 THE COURT: All right. Everyone be seated.

20 We have all the jurors returning from the break. We
21 have Special Agent Johnson back on the witness stand.

22 Mr. Dickinson, do you want to continue with your
23 redirect?

24 MR. DICKINSON: The government has no further
25 redirect Your Honor.

Michael Johnson - RX

1 THE COURT: All right. Any defendant wish to perform
2 recross?

3 MR. TANASI: Yes, please, Your Honor.

4 THE COURT: All right. Go ahead, Mr. Tanasi.

5 RECROSS-EXAMINATION

6 BY MR. TANASI:

7 Q. Good morning again, Agent Johnson. How are you?

8 A. Good morning. Well. Thank you.

9 Q. Good. Prior to our break, you indicated that this was not
10 a protest in your opinion; correct? Your words.

11 A. It did not appear to be a protest.

12 Q. As you sit here today, you are saying it's not. And that
13 event on the 12th was not a protest; correct? That's your
14 words.

15 A. It appeared to be much more than that.

16 Q. Okay. But again, prior to the break, you said it was not
17 a protest; is that fair?

18 A. I don't recall my exact words. I don't recall it to be --
19 I don't believe it to be just a protest.

20 Q. Would you like the court reporter to read your words back
21 for you, sir?

22 THE COURT: That's not available. We don't do read
23 backs.

24 BY MR. TANASI:

25 Q. Understood. Again, as you sit here today, is it your

Michael Johnson - RX

1 testimony that the events on the 12th was not a protest?

2 A. No.

3 Q. No, it wasn't a protest; or no, it's not your --

4 A. No, it's not a protest.

5 Q. Okay. So, prior to today's testimony, do you recall
6 meeting with Agent Willis on January 15, 2015?

7 A. Agent Willis from the FBI?

8 Q. Yes, sir.

9 A. I recall.

10 Q. Okay. And in that meeting with Agent Willis, you
11 discussed all of your prior reports and interviews in this
12 case; correct?

13 A. Correct.

14 Q. And nothing changed when you met with him on January 15th?

15 A. Right.

16 Q. January 15th, 2015; correct?

17 A. No.

18 Q. So your reports were true and accurate, and your
19 interviews were true and accurate as well; correct?

20 A. Yes.

21 Q. All right. Do you recall, on May 22nd, 2014,
22 approximately 1:00 p.m., you were interviewed by Kent Kleman?

23 A. Okay.

24 Q. Do you recall that?

25 A. I recall.

Michael Johnson - RX

1 Q. Okay. And in that interview, you went over the events, as
2 you recalled them, on April 12th, 2014; correct?

3 A. Correct.

4 Q. Do you recall doing that?

5 A. I do.

6 Q. Okay. Do you recall telling Kent Kleman that you believed
7 the Bundys felt empowered by the militia protest -- I'm
8 sorry -- militia presence at the protest?

9 A. I believe we were using protest as -- protesters as a
10 matter of a word to use.

11 Q. You used the word "protest." You called it a protest --
12 fair enough -- on May 22, 2014? Yes or no, sir?

13 A. Okay. Yes.

14 MR. TANASI: Thank you. Nothing further?

15 THE WITNESS: Okay.

16 THE COURT: Anyone else?

17 MR. MARCHESE: No recross from Parker.

18 MR. ENGEL: Yes, Your Honor.

19 THE COURT: Mr. Engel?

20 RECROSS-EXAMINATION

21 BY MR. ENGEL:

22 Q. Thank you, Agent Johnson, for your patience with me. Is
23 it true that these folks in the parking area near post one were
24 carrying flags?

25 A. Where exactly?

Michael Johnson - RX

1 Q. On the opposite side of the freeway where they were
2 parking and all along the freeway.

3 A. I don't recall exactly.

4 Q. Do you recall if these folks were yelling while they were
5 on the other side of the freeway?

6 A. I couldn't hear them.

7 Q. Would carrying flags and yelling be consistent with
8 freedom of speech enshrined in the First Amendment of the
9 Constitution?

10 MR. DICKINSON: Objection. Calls for a legal
11 conclusion.

12 THE COURT: Sustained.

13 BY MR. ENGEL:

14 Q. You stated that you saw people in the parking area bearing
15 arms; is that correct?

16 A. What parking area?

17 Q. Near post one where they were all parking near the
18 northbound lane.

19 A. Yes.

20 Q. You also stated that you saw people bearing arms on the
21 freeway above the wash; correct?

22 A. Yes.

23 Q. Isn't it true that bearing arms is enshrined in the Second
24 Amendment of the US Constitution?

25 MR. DICKINSON: Objection. Calls for a legal

Michael Johnson - RX

1 conclusion.

2 THE COURT: Sustained.

3 BY MR. ENGEL:

4 Q. How far away from you was Agent Shilaikis when he was
5 videotaping the events?

6 A. He was right next to me.

7 Q. So, it would stand to reason that he would have captured
8 the alleged weapons pointing; correct?

9 A. There -- I didn't see any weapons pointed in the direction
10 he was videoing.

11 Q. You stated that you saw personally weapons pointed at your
12 fellow officers; correct?

13 A. I did.

14 Q. So would it stand to reason that Agent Shilaikis, while
15 standing next to you videotaping the event, would have captured
16 protesters pointing weapons at your fellow officers; correct?

17 A. No, he was videoing in a different area. I saw them when
18 I was with Agent Russell.

19 Q. So he was -- excuse me.

20 So you were visually seeing people pointing weapons,
21 and you never said Agent Shilaikis videotape that?

22 A. I wasn't with him when I saw it.

23 Q. You just -- oh, sorry. Have you seen Agent Shilaikis's
24 video?

25 A. Yes.

Michael Johnson - RX

1 Q. On that video, from his perspective and your perspective,
2 have you ever seen any video evidence of people pointing
3 weapons at your fellow officers?

4 MR. DICKINSON: Objection, Your Honor. He stated he
5 wasn't with Agent Shilaikis the majority of that time in that
6 video, so it couldn't have been from his perspective.

7 BY MR. ENGEL:

8 Q. Have you seen the video since April 12?

9 A. Yes.

10 Q. Since -- now that you've seen the video since April 12th,
11 have you seen anybody on that video pointing weapons at your
12 fellow officers?

13 A. Specifically on Agent Shilaikis's video?

14 Q. Specifically on Agent Shilaikis's video.

15 A. No.

16 Q. Thank you. You stated that you did see people pointing
17 weapons at your fellow officers. Did you have an access to a
18 radio that day?

19 A. I did.

20 Q. Would it be unreasonable to say -- strike that question.

21 Did you report over the radio, to any of your fellow
22 officers, that protesters were pointing weapons at your fellow
23 officers?

24 A. I did attempt to do so, yes.

25 Q. You attempted to do so. Did you do that, sir?

Michael Johnson - RX

1 A. There was so much radio traffic, that I am unaware if my
2 traffic transmitted through or not.

3 Q. It would be a fairly important thing to see, if protesters
4 were pointing rifles at your fellow officers; is that correct?

5 A. Yes, and I did hear others relaying the same information.

6 Q. I didn't ask you that, sir.

7 A. Okay.

8 Q. It's a fairly -- you've stated it's fairly important. It
9 could be dangerous if people were pointing weapons at your
10 fellow officers. But you did not broadcast over the radio that
11 people were pointing weapons at your fellow officers?

12 MR. DICKINSON: Objection, Your Honor.

13 THE COURT: He said he attempted to broadcast it over
14 the radio.

15 BY MR. ENGEL:

16 Q. How many times did you attempt to do that, sir?

17 A. One time.

18 Q. One time. Can you pull up 258, please.

19 Sir, is it a reasonable response for people to take
20 cover when weapons are being aimed at them?

21 A. Yes.

22 Q. That would explain why the protesters -- in this picture
23 would explain why the protesters were taking cover behind the
24 concrete barrier; correct?

25 MR. DICKINSON: Objection, Your Honor. Assuming

Michael Johnson - RX

1 facts not in evidence. He's essentially testifying.

2 THE COURT: Sustained. You've asked him about this
3 photograph, and he stated he doesn't know when it was taken,
4 and he didn't see anything from this perspective of the
5 photograph.

6 MR. ENGEL: No more questions, Your Honor. Thank
7 you.

8 THE COURT: Anyone else? Mr. Perez? Mr. Jackson?
9 Mr. Leventhal?

10 MR. JACKSON: Just one question.

11 THE COURT: All right. Go ahead. Mr. Jackson.

12 RECROSS-EXAMINATION

13 BY MR. JACKSON:

14 Q. Did you yourself take cover at any time to avoid being
15 shot by anyone?

16 A. That's why I was behind the generator.

17 Q. You were hiding under a generator?

18 A. I was using it as cover.

19 Q. Were you down on the ground?

20 A. I was kneeling.

21 Q. How long were you down on the ground underneath the
22 generator?

23 A. For the duration of the time I was there.

24 Q. Two hours?

25 A. It was one to two hours.

Michael Johnson - RX

1 Q. You were hugging the ground for two hours?

2 A. I was kneeling, squatting. I don't recall exactly my
3 position the entire time.

4 Q. How were you doing your job to watch what was going on if
5 you were down hugging the ground?

6 A. I was watching over the top and to the side of the
7 generator with my binoculars and with my eyes.

8 Q. Oh, so you were down like this underneath, or were you up
9 looking around?

10 A. Kneeling, squatting. I mean, looking all around.

11 Q. Well, what do you define as taking cover?

12 A. Cover is defined as something that would stop a bullet.

13 Q. Okay. So if you are up looking through your binoculars,
14 was your head or your body or your chest exposed to anyone that
15 had a rifle or a gun or some weapon --

16 A. Yes, it was.

17 Q. -- at any time?

18 A. Yes, it was.

19 Q. So you weren't taking cover during at least part of that
20 time; is that right?

21 A. I did have parts of my body that were exposed at times,
22 yes.

23 Q. Okay. So, part of the time -- part of the two hours, you
24 weren't just hugging the ground, you know, afraid for your
25 life; is that right?

Michael Johnson - RX

1 A. There were times when I was exposed, yes.

2 Q. Okay. And there were other officers there that were
3 walking around like they were not afraid at all during part of
4 that time; is that correct?

5 A. Walking --

6 Q. Walking around the area. BLM agents, HPD agents, Metro
7 agents; is that correct?

8 A. I would be speculating to say exactly what they were
9 doing. I was focused on what I was looking at.

10 Q. You could see the other officers though; right?

11 A. I could see them down below me, yes.

12 Q. You were watching them?

13 A. Right.

14 Q. Watching them to see they were safe?

15 A. Yes.

16 Q. You were also watching the other people in the gully;
17 right?

18 A. Yes.

19 Q. But you said you couldn't see what was down in the gully
20 very well?

21 A. I'm unclear as to exactly what you are --

22 Q. Okay. Down in the wash, you couldn't see what was down in
23 the wash very well?

24 A. Are you talking in between the --

25 Q. Right. In between the --

Michael Johnson - RX

1 A. In between, I couldn't see, no.

2 Q. Okay. You were asked by Mr. Engel, I think, whether you
3 could see any flags. And you seemed to not be able to see any
4 flags. You couldn't see any flags with your binocular out?

5 A. I don't recall specifically seeing flags.

6 Q. You know what a flag looks like?

7 MR. DICKINSON: Objection. Argumentative.

8 THE COURT: Sustained.

9 MR. JACKSON: I have no further questions.

10 MR. PEREZ: Nothing from Mr. Lovelien, Your Honor.

11 MR. LEVENTHAL: Nothing on behalf of Mr. Drexler.

12 Thank you.

13 MR. ENGEL: Nothing from Engel.

14 THE COURT: Any redirect?

15 MR. DICKINSON: No, Your Honor.

16 THE COURT: All right. Thank you, Agent Johnson.

17 THE WITNESS: Thank you. Your Honor. Thank you,
18 ladies and gentlemen of the jury.

19 THE COURT: And please be careful on your way down
20 the steps.

21 The government may call its next witness.

22 MR. TANASI: Your Honor, the United States calls
23 Special Agent Adam Sully.

24 THE COURT: Good morning, Special Agent Sully. Come
25 on up. You are going to be seated next me in the witness

Adam Sully - Direct

1 chair, but watch your step on the way up. There's a couple of
2 steps there.

3 ADAM SULLY,
4 having been duly sworn, was examined and testified as follows:

5 COURTROOM ADMINISTRATOR: State your full name and
6 spell it for the record.

7 THE WITNESS: Adam Sully, A-D-A-M S-U-L-L-Y.

8 DIRECT EXAMINATION

9 BY MS. CREEGAN:

10 Q. Good morning, sir.

11 A. Good morning.

12 Q. Could you please tell us your current job?

13 A. I am a Special Agent with the United States Department of
14 Interior, Bureau of Land Management.

15 Q. How long have you had that job?

16 A. Since 2009.

17 Q. And before that, what were you doing?

18 A. I was a law enforcement ranger with the Bureau of Land
19 Management.

20 Q. Could you explain what the difference is between a ranger
21 and a special agent?

22 A. A ranger for the Bureau of Land Management is the
23 uniformed patrol function, so it would be the same as your
24 typical police department having their patrol and their
25 detectives. And the special agents are responsible for the

Adam Sully - Direct

1 long-term investigations.

2 Q. So all together, you have been with the BLM as a law
3 enforcement officer since 1999?

4 A. Correct.

5 Q. And when you entered on to duty with the BLM, did you have
6 to do any special training?

7 A. Yes.

8 Q. Could you describe that training, please?

9 A. So, when I became a BLM ranger, part of the training was
10 attending the Federal Law Enforcement Training Center, which is
11 in Glencoe, Georgia. That was a 13-week -- at that time, it
12 was called the Land Management Police Training Program.

13 Q. Okay. And what generally did you cover there?

14 A. It was a variety of police training related to patrol
15 tactics, report writing, firearms training, defensive tactics.

16 Q. Where are you currently stationed?

17 A. In Oregon.

18 Q. Where have you been stationed since 1999?

19 A. In Eugene and in Salem, Oregon.

20 Q. Both in Oregon. And did you become involved with the
21 BLM's impoundment operation in the Bunkerville, Nevada, area in
22 April of 2014?

23 A. Yes.

24 Q. And how did you become involved considering that you are
25 not from the Nevada area?

Adam Sully - Direct

1 A. At some point, there was an email or a call that requested
2 assistance with the operation in Nevada.

3 Q. And was it seeking volunteers or telling people that they
4 were assigned?

5 A. It was a volunteer operation.

6 Q. Were you a volunteer?

7 A. Yes.

8 Q. And why did you volunteer?

9 A. It's common just -- the BLM doesn't have a lot of law
10 enforcement, so it's common for people to assist in other areas
11 where there's not enough law enforcement presence in that area
12 to conduct an operation.

13 So, it was an opportunity to work in an area that --
14 that I normally am not from and with something that typically
15 in my area I don't deal with.

16 Q. You don't usually do cattle impoundments in Salem or
17 Eugene?

18 A. I don't.

19 Q. And about when did you arrive in the Bunkerville, Nevada,
20 area?

21 A. I know briefing was on April 4th, so on or about
22 April 3rd, 2014.

23 Q. Did you have an understanding or had you have been briefed
24 by the time you arrived earlier what your general
25 responsibilities would be?

Adam Sully - Direct

1 A. Yes.

2 Q. And what were your general responsibilities?

3 A. I was assigned as a member -- it was the investigative
4 team. And, really, our duties going in were going to be, to be
5 open to duties as assigned. So, it was going to be a variety
6 of things that came up during the operation.

7 Q. Who was on the investigative team?

8 A. Well, my supervisor, the team leader was Special Agent --
9 let's see -- Michael Johnson. And then I worked directly with
10 another agent named Mike Hauck. And there was a couple other
11 agents on the team, Lance Maniscalco and Bryn Elton.

12 Q. And Agent Mike Hauck was your partner essentially?

13 A. Yes.

14 Q. And from the time that you arrived about 2nd, 3rd, 4th,
15 and up to April 6th, what were the general duties that you were
16 performing?

17 A. It was a variety of duties. We had -- we had contract
18 pilots, so we would meet them at the airport and give them law
19 enforcement escort back to the lodging they were in. If -- the
20 BLM civilian employees would have law enforcement with them in
21 the convoy, so if they needed extra people for protection, then
22 we would provide that.

23 Q. You mentioned that you would be escorting pilots. What
24 were the pilots piloting?

25 A. Helicopters.

Adam Sully - Direct

1 Q. And what were the helicopters used for?

2 A. My understanding is they were used to herd the cattle
3 during the impoundment where they wanted cattle to go.

4 Q. And you mentioned that you were providing an escort for
5 convoys. Who was in those convoys?

6 A. There was BLM employees -- civilian BLM employees. There
7 was contractors that were hired to assist with the operation.

8 Q. Were you briefed as to what you should anticipate? Would
9 there be a need for a law enforcement officer on the convoy?

10 A. Going into the operation, it was made known that Cliven
11 Bundy had stated that he would do, you know, whatever is
12 necessary to stop the -- the impound from taking place.

13 Q. So you were anticipating some possible interference?

14 A. Yes.

15 Q. Did your duties change in any way as of April 7th?

16 A. Yes.

17 Q. And how did they change?

18 A. As a result of -- on April 6th, Dave Bundy was arrested
19 for failing to leave a closed area. And then after that event,
20 there was posting on -- on one of the Bundy's blogspots.
21 Something to the effect of "They have my cattle, they have my
22 son, and the range war starts tomorrow."

23 And there was a rally that was planned for the 7th
24 that the Bundys were inviting supporters to come attend.

25 Q. And what was your assignment with regard to the rally that

Adam Sully - Direct

1 you just mentioned?

2 A. So we were asked to go to the rally in plain clothes, just
3 to report back an assessment of the crowd that was there, kind
4 of what things were being said, and just provide our assessment
5 of what the level of risk was with the operation.

6 Q. So you mentioned that you were asked to go in plain
7 clothes. Was this an undercover assignment?

8 A. Yes.

9 Q. And what did you do to sort of prepare your cover?

10 A. So as I said, I was working with Mike Hauck, another
11 special agent. So it was really just coming up with a quick
12 back story, if -- if we were approached just with conversation,
13 as far as where we were from or other details.

14 Q. Were you intending to identify yourself as BLM law
15 enforcement at the rally?

16 A. No.

17 Q. And why not?

18 A. I don't feel we would get an accurate reflection of what
19 was going on at the rally if they knew that there was BLM law
20 enforcement there.

21 Q. So you were prepared to tell them a back story that you
22 were not law enforcement if anyone asked?

23 A. That's correct.

24 Q. Did you, in fact, attend the rally on the 7th?

25 A. Yes.

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1 Q. And about what time did you get there?

2 A. On or about 9:00, 9:30.

3 Q. Okay. And where was it located?

4 A. So, off of State Route 170, which is close to where the --
5 the Bundy Ranch is, there was a -- kind of a pullout that went
6 down just adjacent to the right-of-way of the highway there.
7 And it was down in that area.

8 MS. CREEGAN: Okay. Your Honor, can we publish
9 Government's previously admitted Exhibit 330, please?

10 THE COURT: Yes, you may.

11 BY MS. CREEGAN:

12 Q. And Special Agent Sully, do you recognize this map?

13 A. Yes.

14 Q. Can you generally identify the major roadways that you see
15 on this map by putting a line on them as you explain them? You
16 can touch the screen --

17 A. Okay.

18 Q. -- and make a line so the jury can see.

19 A. So this would be the interstate.

20 Q. And that's the --

21 A. 15.

22 Q. That's the I-15 running across the east/west version of
23 the top of the map?

24 A. Correct.

25 Q. Okay. What other major roadways do you recognize?

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1 A. This is the one that I referred to as State Route 170.

2 Q. And this is a road that dips down from the top of the map
3 to the center; is that correct?

4 A. Correct.

5 Q. Are there any other roadways that you recognize?

6 A. Sorry. Could you repeat that?

7 Q. I'm sorry. I have been told I talk very quietly.

8 Are there any other roadways that you recognize?

9 A. No.

10 Q. Okay. Those are the major roads in the area?

11 A. Yes.

12 Q. And could you, with a circle, please indicate where the
13 rally site was?

14 A. Generally in that area.

15 Q. And about how close was that to the Bundy family's private
16 residence?

17 A. I'm not sure exactly the scale. I believe the private
18 residence is down there where the -- in this area -- in this
19 area there.

20 Q. That's the purple dots in the bottom left?

21 A. Correct.

22 Q. And where on this map is the impound site or the ICP where
23 the BLM was located if it is there?

24 And that is --

25 A. In that general area.

Adam Sully - Direct

1 Q. I'm sorry. I don't mean to talk over you. That's in the
2 top right corner of the map?

3 A. Yes.

4 Q. Okay. So you attend this rally on the 7th, and you
5 mention that you got there around 9:30. About how long were
6 you there?

7 A. Till -- probably three hours.

8 Q. About three hours?

9 A. Yeah.

10 Q. When you arrived, did you see that there were any other
11 people there?

12 A. Yes.

13 Q. About how many other people?

14 A. I would estimate like 50 to 75 when we got there.

15 Q. Over the course of the time that you were there, about how
16 many people did you observe?

17 A. I would estimate about 100 people.

18 Q. And can you describe generally how people were attired?

19 A. I would describe it as kind of a typical western or
20 range-type dress. What I would expect to see kind of in that
21 area.

22 Q. So, what are some items of clothing people would be
23 wearing?

24 A. Just blue jeans, button-up or T-shirts. Some of them had
25 cowboy hats, some ball caps.

Adam Sully - Direct

1 Q. Did you observe that there were any cars parked by the
2 rally site?

3 A. Yes.

4 Q. And were you able to observe what states the license
5 plates were from?

6 A. Yes, some of them.

7 Q. What were the license plates that you saw?

8 A. For most part, it was Nevada, Utah. Maybe a couple
9 Arizona. Generally areas that are close within driving
10 distance of the rally site.

11 Q. Did you observe whether anyone was carrying any firearms?

12 A. On the 7th, I don't recall any standing out.

13 Q. People may have been carrying firearms, but it wasn't
14 conspicuous to you?

15 A. Correct.

16 Q. Can you generally describe the -- the mood of the rally?

17 A. I guess I would -- it was kind of the typical speeches.
18 They had a couple speakers there. And it was generally the --
19 kind of anti-federal government and the -- that the federal
20 government couldn't own federal land, so there -- there was no
21 BLM authority there to enforce this -- the grazing, the court
22 order.

23 Q. And did you hear anything that suggested to you a plan to
24 interfere with the BLM at that time?

25 MR. LEVENTHAL: Objection. Hearsay.

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1 THE COURT: I'm sorry. I didn't hear the question.
2 Could you repeat it?

3 MS. CREEGAN: Did he hear anything regarding a plan
4 to interfere with the BLM at that time?

5 THE COURT: What was the objection?

6 MR. LEVENTHAL: Relevance and hearsay.

7 MS. CREEGAN: One of the charged counts is
8 interfering. And if anybody did make a statement about the
9 plan, it would be in furtherance of the conspiracy.

10 THE COURT: Overruled. He may answer the question.

11 BY MS. CREEGAN:

12 Q. Did you hear anything to that effect?

13 A. On the 7th, I don't recall anything.

14 Q. And did you, or Agent Hauck, or people that you directed
15 to do so in the crowd take any pictures at the time you were
16 there at the rally site on the 7th?

17 A. Yes.

18 Q. And could I ask you to please turn in your government
19 exhibit book to look at Exhibits 15, 16, and 18 through 22.

20 A. I am sorry. Could you repeat those numbers again?

21 Q. Of course. 15 and 16.

22 A. 15 and 16.

23 Q. There are multiple books.

24 A. Mine start at 276.

25 Q. Look for the one that has a 1 on the cover.

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1 A. And I apologize. I will start with number --

2 Q. Look at 15 and 16, please. Just let me know if you
3 recognize them.

4 A. Exhibit 15, yes, I recognize that.

5 Q. Okay. Can you look at Exhibit 16, please?

6 A. Yes, I recognize Exhibit 16.

7 Q. And may I ask you to also review Exhibits 18 through 22?

8 COURTROOM ADMINISTRATOR: Counsel, that was 18
9 through 22?

10 THE WITNESS: I recognize Exhibit 18.

11 BY MS. CREEGAN:

12 Q. Okay.

13 A. Exhibit 19 I recognize. Exhibit 20 I recognize.
14 Exhibit 21 I recognize. And Exhibit 22 I recognize.

15 Q. And generally speaking, what are these?

16 A. So generally after where the rally was initially, where
17 they had a couple people do speeches, then they moved up right
18 adjacent to the State Route 170. And people assisted with
19 erecting a couple posts with the banner that was in one of
20 those -- one of those photographs, one of those exhibits.

21 Q. So these pictures depict activities that occurred at the
22 rally site while you were there on the 7th?

23 A. That's correct.

24 Q. Do these pictures fairly and accurately represent what you
25 saw on the 7th?

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1 A. On the 7th, yes.

2 MS. CREEGAN: Your Honor, the government moves to
3 admit 15, 16, and 18 through 22.

4 MR. MARCHESE: No objection Parker.

5 MR. TANASI: No objection Stewart.

6 MR. LEVENTHAL: No objection on behalf of
7 Mr. Drexler.

8 MR. ENGEL: No objection from Engel.

9 MR. PEREZ: No objection Lovelien.

10 MR. JACKSON: No objection from Mr. Burleson.

11 THE COURT: All right. So Exhibits 15, 16, 18, 19,
12 20, 21 and 22 will be admitted.

13 (Exhibit 15, 16, 18, 19, 20, 21 and 22 admitted.)

14 MS. CREEGAN: Thank you. Permission to publish 15?

15 THE COURT: You may.

16 BY MS. CREEGAN:

17 Q. And Agent Sully, can you please describe what's going on
18 in this picture?

19 A. That's where we had moved up next to the State Route 170.
20 And I recognize that's Special Agent Hauck holding up a sign as
21 we are just standing behind that -- the banner that I was
22 talking about that's eventually put up between the two white
23 posts.

24 Q. Okay. Exhibit 16, please. And do you recognize this
25 picture?

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1 A. Yes.

2 Q. Can you describe what's going on here?

3 A. That's me holding up the sign as we were getting ready to
4 help put it up.

5 Q. And Exhibit 18, please? Can you describe what's depicted
6 in this picture?

7 A. This is an overview of initially where we gathered. Down
8 in that area is -- they used -- the back of the pickup truck
9 was a stage for speeches for a couple people to talk. And then
10 we moved up from that location to the area where the -- what
11 would become their staging area that was next to the
12 interstate.

13 Q. And so these are the sorts of people that you were
14 observing depicted in this picture and the license plates that
15 you were observing depicted here?

16 A. That's correct.

17 Q. And Exhibit 20, please. And can you describe what's
18 happening in this picture?

19 A. Again, that's another overview. And that's after we had
20 moved up. On what would be the left side of that picture, you
21 can see one of the white posts that's described that gets put
22 up, and then the banner goes between them. So it's that --
23 it's that group again moving up to the staging area.

24 Q. And let me just ask you for a little information. So you
25 had mentioned that you heard some speeches in the back of

Adam Sully - Direct

1 pickup trucks, and then the group went to start to work on
2 something.

3 A. (Nods head.)

4 Q. And -- sorry. Could you answer in a verbal response?
5 They have to --

6 A. Yes, that is correct.

7 Q. Thank you. And so what is it that they set to work on?

8 A. I don't recall exactly kind of what they had talked about.
9 But while we were up there, they kind of made a point of
10 everybody getting involved with putting up the -- the posts and
11 that big sign up there at that staging area.

12 Q. So first there were some people speaking, and then there
13 was the assembly of this speaking area with the two posts?

14 A. Correct.

15 Q. Okay. And can I ask for Exhibit 21, please?

16 And what's depicted in this picture?

17 A. Again, these are the two white posts that eventually
18 are -- had the sign. They are put out and the sign is placed
19 between them.

20 Q. And Exhibit 22, please? What's depicted here?

21 A. So this is where they requested everybody to get a hand on
22 the post and help -- help put it up to hang up their banner.

23 Q. Thank you very much. So, did there come a time where you
24 left the rally?

25 A. Yes.

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1 Q. And after that, what did you do?

2 A. After that, we briefed our -- Special Agent Mike Johnson,
3 our team lead, of what our opinion was of the rally. What we
4 saw. What we had heard.

5 Q. And what was your general assessment of the rally?

6 A. At that time, it was kind of what we expected as far as
7 people that were coming in to support Bundy. In my opinion,
8 there wasn't really -- I didn't see a threat to stop the
9 operation. I didn't hear any direct plans or anything at that
10 time.

11 Q. So from that point until sometime on April 10th, what
12 duties are you performing?

13 A. Again, more of the escorting-type duties as assigned to
14 help out with -- with other teams or things that came up.

15 Q. Did that change somewhere between April 10th and
16 April 11th?

17 A. Yes.

18 Q. And how do your duties change?

19 A. So as a result -- on April 9th, there was an altercation
20 during -- there was a -- some BLM employees, who their mission
21 for that day was to remove structures that were on BLM that
22 weren't permitted. And as they -- so again, these -- these BLM
23 employees are escorted by law enforcement.

24 As the BLM employees are coming out, the ones driving
25 the dump truck pulling the trailer, where they are coming out,

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1 it's visible from where that staging area was that was in the
2 photographs.

3 And during that, there was an individual by the name
4 of Pete Santilli. He had put his vehicle in front of the first
5 law enforcement vehicle coming out to stop the convoy. And --

6 MR. MARCHESE: Objection. Foundation. Lack of
7 personal knowledge.

8 BY MS. CREEGAN:

9 Q. Just very generally, what was your understanding of what
10 happened on the 9th?

11 A. As a result of BLM law enforcement trying to get those
12 employees out of that conflict to a safe area, Ammon Bundy was
13 tased during that event which was posted on social media.

14 Q. And how did that change the duties that you had?

15 A. We had intel analysts and, you know, even ourselves kind
16 of watching social media. And as result of that, there was a
17 lot more responses from either self-described or known militia
18 members that said they were coming into the area, bringing guns
19 and ammo to -- to support the Bundys and stop the BLM.

20 MR. MARCHESE: Objection. Hearsay.

21 BY MS. CREEGAN:

22 Q. Did you receive a general threat assessment that the
23 threat had increased?

24 A. Yes.

25 Q. And so as a result of that, what new assignments, if any,

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1 did you receive?

2 A. So then on April 10th, our team leader, Special Agent Mike
3 Johnson, instructed Mike -- Special Agent Mike Hauck and I that
4 we were to do additional undercover operation.

5 And for the next five day, we were going to be
6 assigned to attempt to spend as much time as we could at the
7 Bundy's staging area just to continually assess what was going
8 on, what the -- what type of threats, if any, they were making.
9 And a general feel for what the crowd was.

10 Q. And in furtherance of that mission, did you take any steps
11 to adopt a new cover identity, improve your old one, prepare
12 for an undercover role?

13 A. Yes. Part of that mission was to go to Las Vegas and rent
14 a couple cars that weren't government vehicles in attempt just
15 to -- where they wouldn't be able to identify us as BLM.

16 We then went and got a hotel in St. George, Utah, so
17 that we wouldn't be traveling in and out of the known BLM
18 incident command post off of Interstate 15.

19 Q. And did there come a time when you attended another rally
20 at the same site that you had been at before?

21 A. Yes.

22 Q. And when was that?

23 A. On April 11th, 2014.

24 Q. And about what time did you get there?

25 A. We got there around 10:30 in the morning.

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1 Q. And about how long were you there?

2 A. Till around 3:30 that afternoon.

3 Q. I am going to ask you some similar questions to the ones I
4 asked you about the 7th. So the first one is, generally how
5 were people attired?

6 A. Excuse me?

7 Q. What types of clothing were they wearing?

8 A. You had some that were in -- like I described on the 7th,
9 the typical Western ranch wear, blue jeans, cowboy hats. But
10 also mixed in was a lot of people that were in military-type
11 clothing, camouflage. What I would describe as more
12 military-type dress.

13 Q. And did you also have an opportunity to observe some of
14 the license plates of the cars that were parked near the rally
15 site?

16 A. Yes, I did some of them.

17 Q. And what states were those license plates from?

18 A. Again, there was kind of the local -- the driving area,
19 the Nevada, Utah, Arizona. But in addition to that, there was
20 more of the California, Idaho, Montana. A further drive.

21 Q. And did you observe anybody with a firearm at the rally?

22 A. Yes.

23 Q. About how many people did you observe with firearms?

24 A. Without --

25 Q. With firearms.

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1 A. Probably around 20 people with firearms.

2 Q. And what types of firearms were these?

3 A. Some were holstered sidearms, and then I would estimate
4 around four of they were rifles, long guns.

5 Q. And before you attended this rally, were you given any
6 pictures of people to look for?

7 A. Yes.

8 Q. And did one of the -- the people that you were given a
9 picture to look for, were you given the name Ricky Ray
10 Lovelien?

11 A. Yes.

12 Q. And did you, in fact, see that individual at that rally?

13 A. Yes.

14 Q. Did you speak to that individual?

15 A. Briefly. It was a greeting.

16 Q. And if you need to stand up, please do. But do you see
17 that individual here in the courtroom today?

18 A. Yes.

19 Q. And can you please indicate, by just generally describing
20 where he is seated, if he's seated, and what he is wearing?

21 A. At the back table on the right with the blue shirt and
22 glasses on his forehead.

23 MS. CREEGAN: And Your Honor, we'd ask that the
24 record reflect that he's identified the defendant Ricky Ray
25 Lovelien.

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1 THE COURT: Yes, the record will so reflect.

2 BY MS. CREEGAN:

3 Q. And Agent Sully, you mentioned you just exchanged a few
4 words with him. Anything more than an introduction?

5 A. No.

6 Q. Did you observe other people that you had been given
7 pictures for?

8 A. Yes.

9 Q. Who did you observe?

10 A. Mel Bundy, Ryan Payne, Jim Lardy.

11 Q. Did you speak with Ryan Payne?

12 A. No.

13 Q. Did you hear him speaking?

14 A. Yes.

15 Q. And what were the circumstances under which you heard him
16 speaking?

17 A. I had overheard a conversation when he was talking with
18 Mel Bundy, and I overheard -- he was -- Ryan Payne was telling
19 Mel that there were some of the militia aren't going to come
20 until a certain event took place. I couldn't overhear exactly
21 what that event was.

22 Q. So he said some words to the effect the militia won't come
23 until --

24 MR. MARCHESE: Objection. Leading.

25

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1 BY MS. CREEGAN:

2 Q. Sorry. I was trying summarize. Would you say in your own
3 words as close as you can remember what it is what he said?

4 A. He said -- he told --

5 MR. JACKSON: I am going to object on the grounds of
6 hearsay and on the grounds of confrontation as well.

7 MS. CREEGAN: Your Honor, this would be a
8 coconspirator Ryan Payne in a statement in furtherance of the
9 conspiracy coordinating militia arrival. And further, there is
10 no confrontation issue as these statements are not testimonial.

11 MR. JACKSON: I am renewing my objection that they
12 haven't established a conspiracy as to Mr. Burleson.

13 THE COURT: All right. The objection is noted.
14 You may answer the question. You might need to
15 restate it.

16 BY MS. CREEGAN:

17 Q. Sure. As close as you can remember, what were Ryan
18 Payne's words to Mel Bundy?

19 A. So Ryan Payne told Bundy -- Mel Bundy that some of the
20 militia aren't going to come until a certain event takes place.
21 And I did not hear what he said -- described that event as
22 being.

23 Q. Did you have any opportunity to speak to Mel Bundy?

24 A. No.

25 Q. Did you hear him speaking?

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1 A. Yes.

2 Q. And what did you hear him speaking about?

3 A. There was a Bundy supporter who arrived at the incident
4 command post, and I overheard -- Mel Bundy asked if he was
5 associated with a militia. And the gentleman said he wasn't.
6 And Mel Bundy --

7 MR. MARCHESE: Objection. Hearsay.

8 MS. CREEGAN: Your Honor, this is also coordination
9 of the militia's arrival in furtherance of this conspiracy.

10 THE COURT: Overruled.

11 MR. MARCHESE: Well, Your Honor, I understand the
12 objection when it comes to Mel Bundy or Ryan Bundy -- or excuse
13 me -- or Ryan Payne as they are charged here. But an unknown
14 individual, who is not charged, I would argue is not part of
15 the conspiracy and that would be hearsay.

16 MR. TANASI: Mr. Stewart joins.

17 MR. JACKSON: Well, there's a conclusion that he's a
18 Bundy supporter. We object to that. We don't have any
19 evidence that he's Bundy supporter or another person unknown.

20 We don't even know who this person is, so that's
21 certainly beyond any kind of logical. He's just somebody that
22 was there. We don't know whether it's a Bundy supporter or
23 some passerby.

24 THE COURT: Ms. Creegan.

25 MS. CREEGAN: Your Honor, we would submit it's a fair

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1 characterization given that the person is at this rally
2 speaking with Mel Bundy attempting to coordinate with him.

3 As to the objection as to what this person is saying,
4 this person is asking a question. The question can't assert
5 information. He's asking where to go and whether he identifies
6 as a militia or not.

7 You know, we are not trying to offer that for the
8 truth of the matter. We don't know whether that individual is
9 a member of the militia or not. The point is that Mel Bundy is
10 able to coordinate people that are arriving and direct some
11 people to stay at the militia camp.

12 THE COURT: All right. The objection is overruled.
13 You might need to ask the question again.

14 BY MS. CREEGAN:

15 Q. I'm sorry. Could you please just repeat what you remember
16 of that conversation between that person and Mel Bundy.

17 A. So, during that conversation, he was asking Mel Bundy
18 about where he could stay. And Mel Bundy asked if he was
19 associated with the militia. And the gentleman said he wasn't.

20 And Mel Bundy had pointed out that there was a
21 militia camp that was further down the road across the river,
22 and that the people who came that weren't associated with the
23 militia, he pointed out a different area that was adjacent to
24 the staging area where they were camped.

25 Q. Did you see where Mel Bundy indicated that these camps

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1 were located?

2 A. At that time, no.

3 Q. Did you see that there was a camp that was relatively near
4 the supporter camp?

5 A. Yes.

6 Q. And were you able to see where there was another camp
7 across the river as he had indicated?

8 A. Yes.

9 Q. Can I pull up Government's Exhibit 330, please.

10 And this is our map that we've previously looked at.

11 Would you please again circle where the rally site was? And
12 can you indicate with an X where the militia camp was located?

13 A. I believe it was generally in that area across that
14 bridge.

15 Q. And just for the record, you've indicated an area just
16 south of the rally site across the Virgin River.

17 A. Yes.

18 Q. Can you indicate with another X where the non-militia
19 camping site was?

20 A. In general, he pointed down towards kind of a -- I'm
21 sorry. That's not a very good X -- but right in that area.

22 Q. So just north of the rally site?

23 A. Generally.

24 Q. And did you have any other memorable conversations while
25 you were at that rally?

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1 A. Yes.

2 Q. And what was that?

3 A. I remember speaking with one individual there. He
4 identified himself as JT, wearing camouflage. And during our
5 conversation --

6 MR. MARCHESE: Objection. Hearsay.

7 MR. TANASI: Mr. Stewart joins.

8 THE COURT: Ms. Creegan.

9 MS. CREEGAN: Your Honor, we would submit that these
10 were also in furtherance of the conspiracy.

11 THE COURT: So also coconspirator statements.

12 MS. CREEGAN: Yes, Your Honor.

13 THE COURT: Overruled. You may answer the question.

14 BY MS. CREEGAN:

15 Q. I'm sorry. What did this individual JT say to you?

16 A. So he was describing to me -- one, he said that he chooses
17 to camp in the militia area camp, because that's where the
18 important decisions are made. And he described the -- the
19 other Bundy supporters that weren't militia as drum-beating
20 hippies.

21 And then he described the -- he said he had better
22 guns than the BLM. And he didn't describe how much, but
23 indicated a large amount of ammunition with him as well.

24 Q. And did there come a time when you saw that Mr. Cliven
25 Bundy was present at this rally?

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1 A. Yes.

2 Q. And how did Mr. Bundy arrive at the rally?

3 A. So, at -- it was around 1:00, because it was a media-type
4 event. He came in with -- it was -- I believe it was five
5 armed escorts with him to the stage.

6 Q. And when you say that they were armed, how were they
7 armed?

8 A. Sidearms.

9 Q. Is there anything else that makes you think that they were
10 escorting him?

11 A. So there was two of them that walked up on the stage with
12 him. And then I remember three of them that stood in front of
13 the stage where he was speaking, and they weren't -- they
14 weren't facing towards him like they were listening to his
15 presentation. They were facing the crowd in more of a
16 security-type stance or posture.

17 Q. Did any of them have radios or earpieces or other types of
18 communication equipment?

19 A. Yes. I did observe one of them with an earpiece and
20 another one had a radio with him.

21 Q. Did you observe anyone else that appeared to be guarding
22 Mr. Bundy?

23 A. I'm sorry. Could you repeat?

24 Q. Did you observe anyone else that appeared to be guarding
25 Mr. Bundy?

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1 A. As far as directly with him walking up to stage?

2 Q. Anywhere in the rally.

3 A. While he was speaking, across -- sorry -- across the road,
4 I can kind of point it out on the map, if you want me to.

5 Q. Certainly.

6 A. So, where that circle is is generally where the staging
7 area was where the rally was taking place. There is a steep
8 hill on that -- on that side. And there was -- I think I saw
9 four people that had long guns up on -- it was higher ground.
10 Looked like, again, providing security for the -- for the rally
11 while he was there.

12 Q. And did Mr. Bundy -- you said he was walking up onto the
13 stage. Did he make a speech on the stage?

14 A. Yes.

15 Q. Did you stay for the entirety of that speech?

16 A. Yes.

17 Q. And did you or anyone else that was with you take a video
18 of that speech?

19 A. I did not. I don't know if anybody else did.

20 Q. Did you later see a video on social media --

21 A. Yes.

22 Q. -- of that speech? And did you review that video?

23 A. Yes.

24 Q. And did you determine whether it fairly and accurately
25 depicted what you saw on April 11?

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1 A. Yes, it did.

2 Q. And I'm going to ask you to turn to Exhibit 49 in the
3 government's exhibit book. And what do you see there?

4 A. There's a disc.

5 Q. And have you previously reviewed the contents of that
6 disc?

7 A. Yes.

8 Q. And is that the video that you mentioned of Cliven Bundy
9 speaking on the 11th?

10 A. Yes.

11 Q. It fairly and accurately represents what you saw?

12 A. Correct.

13 MS. CREEGAN: Your Honor, the government would move
14 to admit Exhibit 49.

15 THE COURT: Any objection to Exhibit 49?

16 MR. TANASI: No objection Stewart.

17 MR. MARCHESE: None from Parker.

18 MR. LEVENTHAL: None, Your Honor. Not on behalf of
19 Mr. Drexler.

20 MR. ENGEL: None from Engel.

21 MR. PEREZ: None from Lovelien.

22 MR. JACKSON: No objection from Mr. Burleson.

23 THE COURT: All right. Exhibit 49 is admitted. Did
24 you want to publish it now?

25 MS. CREEGAN: Yes, Your Honor.

Adam Sully - Direct

1 THE COURT: All right. Go ahead.

2 (Exhibit 49 admitted.)

3 BY MS. CREEGAN:

4 Q. Could you clear your screen, the markings? There's a
5 little clear button.

6 (Exhibit 49 being played.)

7 Q. And who is that individual standing up on the stage behind
8 that table?

9 A. Cliven Bundy.

10 Q. And are you able to observe any persons that you
11 previously described as his security detail in this picture?
12 This screenshot?

13 A. So, there's the person on the stage with him back towards
14 the left appears to be clapping his hands there. The one
15 directly in front of him that has the black T-shirt on, the
16 sunglasses, and the ball cap that's facing away from him. And
17 then the other one that's on the far right side that's taking a
18 drink of water.

19 Q. Would you play, please?

20 (Exhibit 49 being played.)

21 Q. Nicole, can we stop that?

22 Okay. After you observed that speech, did there come
23 a time when you left that rally?

24 A. Yes.

25 Q. And what did you do after that?

Adam Sully - Direct

1 A. We -- myself and Agent Mike Hauck went back to St. George
2 and briefed our team lead, Special Agent Mike Johnson, on what
3 we had seen, some of the conversations we had with people
4 there, and just our general feel of the crowd.

5 Q. What was your general assessment of this rally?

6 A. Based on the conversations we've had and just the change
7 in -- in makeup of the crowd as far as -- when we were there on
8 the 7th, we didn't see any people carrying sidearms. There
9 wasn't the -- the talk of them having more powerful weapons
10 than the BLM, a lot of the just very
11 anti-federal-government-type rhetoric.

12 And our -- our assessment was that it was getting too
13 dangerous. We really needed to assess if it was worth the
14 safety of the BLM employees, law enforcement, and the
15 contractors we had to continue with the operation.

16 Q. And what did you do after you briefed Special Agent
17 Johnson?

18 A. So, that information, my understanding is it went up the
19 chain of command. And that combined with other information, a
20 short time later on the evening of the 11th, we heard that the
21 operation was being canceled due to safety concerns, like I
22 mentioned, for the contractors, the BLM employees, and law
23 enforcement.

24 Q. And what duties did you have from the 11th and going into
25 the 12th?

Adam Sully - Direct

1 A. So, sometime on the evening of the 11th, we had heard that
2 there was a bomb threat or some kind of threat at the hotel
3 where we were staying at Mesquite. So we were instructed to go
4 back to the hotel, and we provided security at the parking lot.
5 We didn't know if there was anybody staying in the hotel after
6 that. We had heard that --

7 MR. JACKSON: Your Honor, I would like to make an
8 objection at this time, and I would like to have a conference
9 at this time with the Court.

10 THE COURT: Regarding?

11 MR. JACKSON: Regarding the last statement of this
12 witness.

13 THE COURT: All right. Do counsel want to waive the
14 presence of their clients at sidebar? Mr. Engel, obviously, is
15 entitled to attend sidebar.

16 MR. MARCHESE: Yes, Your Honor. Parker will.

17 MR. LEVENTHAL: On behalf of Mr. Drexler, yes.

18 THE COURT: Mr. Perez, does Mr. Lovelien waive?

19 MR. PEREZ: Yes.

20 (Sidebar.)

21 THE COURT: All right. So just to remind you as
22 before, because this is a short wall, whoever is speaking needs
23 to move towards this wall so nobody can read your lips or hear
24 your voice.

25 MR. JACKSON: I will try to be real succinct. I am

Adam Sully - Direct

1 objecting to the statement that came in --

2 THE REPORTER: You need to speak up.

3 THE COURT: He's trying to make it easier for you and
4 not be heard by the jury. Go ahead.

5 MR. JACKSON: I am objecting to the statement that --
6 the evidence that came in about a bomb threat on 4/11 at the
7 hotel. And I don't think it has any relevance to this case, to
8 my client.

9 I think it's highly prejudicial. And under the
10 Federal Rules of Evidence, prejudicial effect is greater than
11 any probative effect.

12 I don't think that there was any way -- I don't think
13 there is any way they can link it to my client or to any
14 general conspiracy. Just a vague saying that there was a bomb
15 threat, I think, is highly prejudicial, and that should not
16 have come before the jury. And I ask that be stricken.

17 THE COURT: Ms. Creegan.

18 MS. CREEGAN: Your Honor, we submit that it's highly
19 probative in this instance. We have a large number of
20 continued threats and interference with the BLM contractors by
21 a large group of individuals, one of which called in this
22 threat to evacuate this hotel.

23 I think the reasonable inference the jury can draw is
24 that one of the Bundy supporters is the person who called in
25 this threat for the purpose of trying to get the BLM to leave

Adam Sully - Direct

1 exactly as Mr. Bundy was instructing the crowd he wanted them
2 to do.

3 MR. JACKSON: Who called it in?

4 MR. MARCHESE: Well, Mr. Parker -- Jess Marchese
5 here. We would join in that.

6 In addition, we don't think the proper foundation has
7 been laid given the fact we don't know who made the statement.
8 It's also -- I don't know if it's a double, a triple or
9 whatever hearsay statement. So, there's also couple levels of
10 hearsay here that are problematic not to mention the
11 foundation.

12 MR. TANASI: This is Richard Tanasi for Steven
13 Stewart. I join as well.

14 MR. PEREZ: Shawn Perez on behalf of Rick Lovelien.
15 I joined.

16 MR. JACKSON: Object to --

17 THE COURT: Let Mr. Leventhal and Mr. Engel speak.

18 MR. JACKSON: I'm sorry.

19 MR. ENGEL: Todd Engel, I join as well.

20 MR. LEVENTHAL: Todd Leventhal on behalf of
21 Mr. Drexler. I join as well.

22 THE COURT: I'm sorry I cut you off.

23 MR. JACKSON: Okay. We can't confront or
24 cross-examine the person who made the treat. Whether it was
25 made -- it could have been made by a law enforcement agent for

Adam Sully - Direct

1 all we know. It could have been made by -- it could have been
2 made by Cliven Bundy, but not by anybody in this group of five
3 people. We don't know.

4 I am objecting to it. I think it's highly
5 prejudicial to my client. The prejudicial effect greatly
6 outweighs any probative value. Sure. There's bomb threats
7 made every day everywhere in the country.

8 It could have been a long-distance phone call for all
9 we know. It could have been made from somebody in Oregon, or
10 in Kansas, or New York, you know, that saw it on the Internet
11 and decided they were going to, you know, mess with things and
12 didn't like the BLM or whatever. We don't know who did it.

13 THE COURT: Ms. Creegan, do you have more evidence
14 other than just the witness saying that there was a bomb threat
15 and he had to go out there and help out?

16 MS. CREEGAN: Not that we intend to introduce.

17 THE COURT: Okay. I'm going to strike it at this
18 point. If there's more information later that gives more
19 light --

20 MR. MARCHESE: Your Honor, I want to make one more --

21 THE COURT: -- then we can make --

22 MR. MARCHESE: Oh, go ahead.

23 THE COURT: -- the objection and reassess it.

24 DEFENDANT ENGEL: Yes, Todd Engel here. Your Honor,
25 we also have evidence from BLM documents that they performed a

Adam Sully - Direct

1 "misinformation campaign."

2 THE COURT: All right. Well, you will be able to
3 present that during the defense or if you elicit it during
4 cross.

5 MR. LEVENTHAL: Just real quick, Your Honor. I want
6 to make a -- just a general objection to the admittance of the
7 coconspirator.

8 Under the *Anderson* case, the United States Supreme
9 Court enunciated the rules that it must be in the course and in
10 furtherance of the conspiracy, but there needs to be some
11 independent evidence and some connection that these defendants
12 had something to do with it.

13 If we just allow coconspirator statements or just
14 label them, the next is unindicted coconspirators which
15 implodes the entire hearsay rule.

16 Now, they are trying to attach labels. Mr. Drexler's
17 name has not come up once except for me. I am the only one
18 that has said his name so far. He has not been identified.
19 He's not -- there has been no -- nothing linking a conspiracy
20 at this point.

21 And I understand that they have to prove the
22 conspiracy, and I think they are putting the cart before the
23 horse when it comes to coconspirator statements not to -- to
24 prove up the conspiracy itself.

25 I understand that, you know, they have to build it up

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1 and then at the end, they can -- but in order to prove or get
2 statements in, because of the -- the untrustworthiness of all
3 these statements and people just hearing things, I am going to
4 object to all of this as a -- all the coconspirator statements.

5 THE COURT: Ms. Creegan, do you have any response to
6 that? I know there's been other statements, too, not just the
7 ones elicited by Ms. Creegan.

8 MR. LEVENTHAL: Correct.

9 MS. CREEGAN: Your Honor, the state of the law is
10 that when a defendant joins a conspiracy, he is part of the
11 conspiracy, and that all of those statements that were made by
12 his coconspirators before he joined can be used as evidence
13 against him.

14 Even if it's Mr. Drexler's argument that he didn't
15 join at the time these statements were made, we can show that
16 there was a conspiracy existed, and that there were -- if
17 stated in furtherance of a conspiracy, then that is sufficient
18 for them to be put before the jury.

19 If the jury wants to reject and say that we are not
20 able to find that Mr. Drexler joined this conspiracy and that
21 this isn't something that he should be on the hook for, that's
22 something that I am sure could be demonstrated over the course
23 evidence.

24 But as of today, we are on day two of probably 30 or
25 35 of evidence. And I believe that we will be able to show

Adam Sully - Direct

1 that we can connect Mr. Drexler to this conspiracy.

2 THE COURT: Mr. Myhre, did you want to add anything?

3 MR. MYHRE: No, Your Honor.

4 THE COURT: I don't see Mr. Dickinson in here. I
5 want to give everybody a chance to speak if you need to.

6 MR. MARCHESE: I have lodged the objection, so I
7 think I made a record. But I want to expand a little bit on
8 what Mr. Leventhal said, although I think he articulated his
9 position very well.

10 I am also particularly concerned in reference to
11 these uncharged coconspirators such as the statement was just
12 elicited from this JT individual. Very little foundation. I
13 don't know who this man is. I don't know what he looks like.

14 So, the fact that we are now bringing in these
15 statements of people who I don't believe are going to be
16 testifying, who I don't believe -- well, I know they are not
17 charged is very problematic to me, and we object to any of
18 those statements.

19 MR. TANASI: And I -- Rich Tanasi. I join for Steven
20 Stewart. I would just add on the foundational component of the
21 conspiracy. I understand potentially what the Court's ruling
22 is, but just I would just ask for more foundation. Otherwise,
23 I think we will continue to object on the same grounds.

24 THE COURT: Well, the coconspirator statements are
25 not testimonial, so there is no confrontational clause on this

Adam Sully - Direct

1 issue. And as conspirator statements, they may be introduced.
2 They are not hearsay.

3 As far as the timing of the evidence, it's difficult
4 to even imagine how they could introduce evidence of the
5 joining of the conspiracy before events of the conspiracy,
6 considering these folks came in from other states to Nevada
7 after the conspiracy allegedly started.

8 So I don't think there's any procedural issue there
9 that's unduly prejudicial either. But I am striking the
10 testimony about the bomb threat being called into the Mesquite
11 hotel, since there's no other evidence to indicate who did
12 that.

13 MR. JACKSON: It's hard for us to have a continuing
14 objection. I hate to keep jumping up and objecting, but that's
15 basically what my position is as well as other counsel have
16 stated.

17 THE COURT: I understand. That's fine. I think it's
18 appropriate. All right. Thank you.

19 (End of sidebar.)

20 THE COURT: All right. So, ladies and gentlemen of
21 the jury, I am going to ask you to disregard that last
22 statement regarding a bomb threat being made at the Mesquite
23 hotel. That's not evidence in this case.

24 BY MS. CREEGAN:

25 Q. Agent Sully, you mentioned that you were on guard duty at

Adam Sully - Direct

1 the hotel. What did you do after that?

2 A. So, we were there throughout the night. And then the next
3 morning, on the 12th, we were instructed to go back to the BLM
4 incident command post and start taking it down and getting
5 prepared to leave the area.

6 Q. And about what time did you -- did you arrive at the
7 impound site?

8 A. About 10:30 that morning.

9 Q. And where were you originally?

10 A. Down kind of around where our offices and other trailers
11 were inside down at the command post.

12 Q. Did there come a time when that changed?

13 A. Yes.

14 Q. What happened?

15 A. Around 11:15, Special Agent in Charge Loren Good told us
16 that there was a group that was gathering up at the front gate,
17 which they referred to as post one, and that they were
18 requesting additional law enforcement up there at the -- up
19 there at post one.

20 Q. And what did you do in response to that?

21 A. Myself and Special Agent Mike Hauck drove up to post one.

22 Q. And what did you observe when you arrived at post one?

23 A. When we got there, there was a crowd gathering at post
24 one. There was marked BLM law enforcement ranger vehicles in
25 front of us, and there was a crowd gathering on the Interstate.

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1 And shortly after we arrived, there was a Las Vegas
2 Metro SWAT vehicle that showed up and a number of marked
3 local -- I believe it was Metro law enforcement vehicles as
4 well.

5 Q. Were you able to observe members of the crowd?

6 A. Yes.

7 Q. Can you generally describe what you saw?

8 A. It was a mix similar to what we saw on -- at the rally on
9 the 11th. Some people in just general dress, western wear,
10 jeans, T-shirts, and then also some of the camouflage
11 military-type clothing.

12 Q. What did you observe people in this crowd doing?

13 A. Yelling at the people in front. Starting to impede
14 traffic up on the Interstate.

15 Q. How long were you at post one?

16 A. It was only about probably 10 minutes.

17 Q. And what happened that you were only there 10 minutes?

18 A. We were -- if I remember correctly, it was Special Agent
19 Mike Johnson heard that they were requesting assistance. What
20 they referred to as post two, which is underneath the -- the
21 I-15 overpass, there was a wash.

22 And there was another area that accessed the command
23 post. And they had put up some cattle gates. And they asked
24 us to going down to post two because of a growing crowd that
25 was gathering at that location.

Adam Sully - Direct

1 Q. And did you, in fact, go to post two?

2 A. We did.

3 Q. And about when did you arrive there?

4 A. It was shortly after that, so probably around 11:25,
5 11:30.

6 Q. And within post two, there's that cattle gate, and then
7 there's the wash leading up to the impound site.

8 A. Uh-huh.

9 Q. Where were you located?

10 A. So when we got down there, there was a line of marked law
11 enforcement vehicles that was fairly close to that gate. And I
12 believe there was another one a few yards behind them. We were
13 probably about 100 yards directly behind that front line of law
14 enforcement.

15 Q. So how many cars did you see in that front line?

16 A. I believe I saw three, if I recall correctly, and it
17 seemed like there was one, at least, directly behind that one.

18 Q. So there were three cars out front, and you were about
19 100 yards back from them?

20 A. Yes.

21 Q. About how far were those three cars from the cattle gate?

22 A. Initially, they were fairly close. I'm estimating, you
23 know, 10 to 20 yards from that front gate.

24 Q. To your knowledge?

25 A. Yes.

Adam Sully - Direct

1 Q. Were you able to observe any people on the other side of
2 that cattle gate?

3 A. Yes.

4 Q. What did you observe?

5 A. The crowd was slowly -- well, pretty rapidly getting
6 larger and approaching the gate yelling and starting to press
7 up towards that gate. And I could see people up on the --
8 gathering up on the overpasses, on both sides, both the
9 north -- northbound and southbound, and then gradually
10 increasing.

11 Underneath the overpass, there's kind of a steep bank
12 that goes up both sides, and there's some cement, kind of like
13 pillars, I guess, holding up as supports. And they were
14 gathering in amongst on that hill.

15 Q. Can you describe the general makeup of the types of people
16 that were present in the crowd? For example, men, women,
17 children, different -- were those all present? Only one?

18 A. We saw a number of men, and there was also women in there.
19 I distinctly remember a woman sitting with what looked like a
20 child, maybe 10 or 11 years old, underneath the overpass area.

21 And so it was a real mix of, you know, women --
22 mostly adult males, but there was women in -- I know I saw at
23 least one child mixed in amongst that group.

24 Q. And did you observe any people with firearms?

25 A. Yes.

Adam Sully - Direct

1 Q. About how many people did you observed?

2 A. There was -- estimating about 20 with just sidearms, and I
3 distinctly remember seeing six people with long guns. As I was
4 there behind my vehicle, I had binoculars. There was another
5 special agent next to me, and I was just trying to identify the
6 threats to him that I could see with the binocular, so I
7 remember calling those out.

8 Q. And how many did you call out?

9 A. I remember around six of them.

10 Q. And do you remember where you saw anybody with a long gun
11 positioned? You had mentioned that you saw people in the wash.
12 People on bridges.

13 A. I know I saw one. And some of them had slung. And the
14 more concerning ones were when the barrel would come up towards
15 the law enforcement in the front. I know I saw one, with
16 binoculars on.

17 It would have been the overpass farther away from us,
18 the north -- it's the northbound, even though it doesn't run,
19 but the overpass further away from us. And then I distinctly
20 remember one. He was -- as I'm looking at that -- where I was
21 talking about that hill with the barriers, and he had a rifle.
22 He was leaning up against one of those barriers to my left.

23 I guess we were on the north side, so that would be
24 east. And it appeared to me he kind of steadied himself and
25 then looked through the scope on the rifle toward the people in

Adam Sully - Direct

1 the front there.

2 Q. And did you remember seeing anybody else specifically that
3 you saw with a long gun?

4 A. I remember people having them slung amongst the crowd but
5 that's all that comes to mind.

6 Q. Did you see any individuals that were on the bridges that
7 had long guns?

8 A. The one that I mentioned that was on the northbound, the
9 overpass that was further away from me.

10 Q. And do you remember the gender of the individual that had
11 the long gun on the bridge?

12 A. I remember see facial hair on him -- I am assuming it was
13 a male -- when he didn't have the rifle raised up.

14 Q. And did you observe what color that facial hair was?

15 A. It was darker color.

16 Q. Was the individual wearing any clothing that you can
17 remember? You can describe?

18 A. I don't remember.

19 Q. Was the individual wearing anything on their head?

20 A. I don't recall. I just remember the rifle.

21 Q. And did this individual ever point a firearm toward the
22 BLM?

23 A. Yes. He briefly raised it up from that position, and it
24 appeared to be looking toward down where we were at, and then
25 lowered it. And I don't know if I continued scanning after

Adam Sully - Direct

1 that point or if he moved out of my view.

2 Q. And did the individual that you mentioned that was up on
3 the embankment, did that individual ever point the gun directly
4 at the BLM?

5 A. Yes.

6 Q. Did you observe that there were armed people behind
7 unarmed people?

8 A. Yeah. I had mentioned there was a woman and what appeared
9 to be, like, a younger minor that were on that embankment
10 underneath there. And that one individual, he kind of moved
11 around, but he was always either leaning up against that pillar
12 or kind of went behind where that woman and child were sitting
13 on that steep embankment.

14 Q. Did you ever hear any announcements come over the BLM's
15 public announcement system?

16 A. Yes.

17 Q. What did you hear?

18 A. I heard -- I can't remember the exact words, but that it
19 was a closed area. That they needed to get back.

20 Q. And how far away were you located from where the PA system
21 was?

22 A. About 100 yards. It was -- I believe it was coming from
23 those front vehicles right there.

24 Q. Could you hear what the person was saying clearly or
25 unclearly?

Adam Sully - Direct

1 A. I could definitely hear that they needed to move back away
2 from the gate. There was a lot of noise coming from the crowd,
3 and I was kind of constantly trying to talk to the -- the other
4 special agent that was with me. But I could clearly hear them
5 saying to the people that were approaching the gate that they
6 had to move back.

7 Q. Did you ever hear the individual using the PA system say
8 that they would shoot?

9 A. No.

10 Q. And you could hear this at a distance of about 100 yards?

11 A. Yes.

12 Q. Did you observe any of the law enforcement officers,
13 whether they be BLM or park service, pointing a firearm toward
14 the crowd?

15 A. No.

16 Q. You could not observe any of them?

17 A. I could not.

18 Q. Did you learn of any requests to use force?

19 A. Yes.

20 Q. What was that?

21 A. I heard over one of the radios the people in front as the
22 crowd was -- was growing and pushing up against that gate, they
23 had requested to use pepper ball, less lethal force.

24 Q. And what thoughts did you have about that?

25 A. I clearly remember, at that time, you know, through my 18

Adam Sully - Direct

1 years of law enforcement experience, that's the most scared I
2 was of either being shot or watching fellow officers be shot.

3 Q. Why was that?

4 A. As this is -- in processing the information we heard the
5 last couple days leading into that event and then with the --
6 the people that were coming, you know, them clearly saying that
7 they were there to -- to stop the government, and then even
8 some of the statements, like, Pete Santilli saying that BLM law
9 enforcement's going to be arrested.

10 And that it felt like it was growing to that -- that
11 flashpoint. As soon as one thing happens, whether it's just
12 someone accidentally, you know, shooting their gun or
13 something, that it was just -- it was going to be mass
14 casualties on both sides.

15 MR. JACKSON: Object to that as a conclusion.

16 THE COURT: Overruled. It's perception.

17 BY MS. CREEGAN:

18 Q. And Ranger, why did the pepper ball make you concerned
19 specifically?

20 A. For me it was -- it would have been that flashpoint that
21 there was a mix at that time of horses, women, children,
22 people. And I didn't think that the people on -- that I saw on
23 the northbound side would know exactly what was going on when
24 they heard the chaos ensue as soon as that happened.

25 And I was afraid they would start shooting live

Adam Sully - Direct

1 ammunition down at the -- our law enforcement in that front
2 line.

3 Q. You thought if the pepper ball was deployed, there would
4 be an exchange of gunfire?

5 A. Yes.

6 Q. Agent Sully, you have mentioned that you were very
7 concerned when you were in the wash; is that correct?

8 A. That's correct.

9 Q. And I think you even mentioned that that was as concerned
10 as you had ever been?

11 A. Correct.

12 Q. Did you describe why you felt that way?

13 A. Yeah. I think as law enforcement officers, we're --

14 MR. TANASI: Objection. Asked and answered.

15 THE COURT: Overruled. You may explain.

16 THE WITNESS: As a law enforcement officer, you know,
17 we focus on kind of just reverting back to our training, and
18 you need to in those situations. You try to just get your mind
19 off it.

20 But that was so volatile, I think, on -- on hearing
21 those people talk about their willingness to shoot law
22 enforcement. And so you can't help but, you know, as you are
23 standing down there, thinking about, you know, your kids and --
24 and I know just from reading, you know, other law enforcement,
25 when there's an officer that dies or something, you understand

Adam Sully - Direct

1 that that officer went in to that profession knowing that it's
2 dangerous. But I think you read about -- you know, they leave
3 behind a son and daughter. You know, that's --

4 MR. MARCHESE: Objection. Self-serving.

5 THE COURT: Overruled.

6 BY MS. CREEGAN:

7 Q. I'm sorry to interrupt you. Please go ahead.

8 A. So, those things, it's etched with the level that it had
9 risen to and how I felt that it was to that point of as soon as
10 that first -- whether it was just something accidental, it was
11 these people had come, in some of their words, as a revolution.

12 I felt like we were just at a complete disadvantage
13 down in that wash where we were at. And so I hope I explained
14 that well enough.

15 Q. In your capacity as a BLM law enforcement officer, had you
16 previously observed protests?

17 A. Yes.

18 Q. What types of protests had you seen?

19 A. We have protests related to timber sales. There's people
20 that don't agree with some of the -- what trees are cut or any.
21 We've had protests associated with our wild horse and burro
22 program and other ones related to mining laws.

23 Q. Was what you observed on the 12th the same or different
24 than those other protests?

25 A. Different.

Adam Sully - Cross

1 Q. How was it different?

2 A. On the -- on the 11th, we had been told, and they knew
3 that the operation was -- was done. We were -- we were packing
4 up to go home. And yet then on the morning of the 12th, they
5 are -- they are coming to our location, you know, where we have
6 our safe spot set up.

7 And it -- they -- they had done what they wanted as
8 far as stopping the cattle impound. So it was -- the way they
9 were bringing -- they were bringing the guns, pointing weapons,
10 and trying to come into the area where we had civilian BLM
11 employees, contractors, and a clearly defined barrier, it was
12 no longer a protest in my mind. It was more of an assault on
13 our location.

14 MS. CREEGAN: Okay. Court's indulgence for a moment?

15 THE COURT: Yes.

16 (Pause in the proceedings.)

17 MS. CREEGAN: Thank you, Agent Sully. I have no
18 further questions.

19 THE COURT: All right. Any cross?

20 MR. TANASI: Yes, Your Honor.

21 THE COURT: Go ahead, Mr. Tanasi.

22 CROSS-EXAMINATION

23 BY MR. TANASI:

24 Q. Good almost afternoon, Agent Sully. How are you?

25 A. Thank you. Good.

Adam Sully - Cross

1 Q. Good. I represent Steven Stewart. I have a few questions
2 for you on cross. Okay?

3 A. Okay.

4 Q. All right. I just want to be clear on how you categorize
5 the 12th. Was it a protest or was it not a protest?

6 A. In my mind, it was not a protest.

7 Q. Okay. You had an opportunity, on January 29th, 2015, to
8 meet with FBI Special Agent Joel Willis; correct?

9 A. That's correct.

10 Q. You see him in the courtroom now; right?

11 A. Yes, I do.

12 Q. Okay. At that meeting, US Attorney Steve Myhre, he was
13 there; correct?

14 A. Yes.

15 Q. Okay. US Attorney Nadia Ahmed was there; correct?

16 A. Yes.

17 Q. And also US Attorney Roger Yang was there; correct?

18 A. I believe so.

19 Q. And in that meeting, you discussed prior interviews and
20 prior reports that you had authored, you know, related to the
21 events of the 12th; correct?

22 A. Correct.

23 Q. And, in fact, there were no changes other than your
24 undercover capacity that were noted to those reports; fair?

25 A. I believe so.

Adam Sully - Cross

1 Q. Okay. So let's go back to the 15th. You authored a
2 memorandum of activity on April 15th, 2014. Do you recall
3 that?

4 A. Yes.

5 Q. Okay. And in that report, you wrote down how you recalled
6 events that took place on April 12th, 2014; right?

7 A. Correct.

8 Q. Okay. And those events were, I guess, three days before;
9 correct?

10 A. Yes.

11 Q. So you didn't take the time on the 12th to write down all
12 these events. You waited three days; correct?

13 A. Yes, that's correct.

14 Q. Prior to preparing this report, you had an opportunity to
15 discuss what you were going to put in that report with other
16 agents?

17 A. Prior to the 15th?

18 Q. Correct.

19 A. Yes.

20 Q. You discussed probably with Agent Love what you were going
21 put into this report; correct?

22 A. No. I don't recall that.

23 Q. You don't recall that. Agent Love, at the time, he was
24 your supervisor; correct?

25 A. No.

Adam Sully - Cross

1 Q. He was Agent Johnson's supervisor; correct?

2 A. I don't believe so.

3 Q. Okay. Agent Johnson, he was your boss; correct?

4 A. He was the team lead for -- for our assignment during
5 that -- during the operation.

6 Q. Okay. So, if Agent Johnson -- if you report to Agent
7 Johnson and Agent Johnson reports to Agent Love, wouldn't that
8 make Agent Love your boss?

9 A. Well, my supervisor isn't Agent Love, so I would have to
10 say no.

11 Q. Okay. He has no supervisor authority over you; is that
12 your testimony?

13 A. That's correct.

14 Q. Okay. All right. So, let's go back to the April 15,
15 2014, report. You've testified here today that it's -- that
16 what occurred on the 12th was not a protest; right?

17 A. As far as underneath the -- where I was located underneath
18 the wash?

19 Q. You've called it not a protest; correct?

20 A. In my opinion, no.

21 Q. Okay. All right. In that report, you indicate that there
22 was a crowd of protesters gathering just off Interstate 15 at
23 post one; correct?

24 A. Correct.

25 Q. Called them protesters; right?

Adam Sully - Cross

1 A. Correct.

2 Q. Okay. You also indicated that there was a crowd of
3 protesters steadily growing to over 200 people; correct?

4 A. On the 12th?

5 Q. Correct.

6 A. Yes.

7 Q. Protesters; right?

8 A. I think that's in the report, yes.

9 Q. That's the word you used. It's in your report; correct?

10 A. Correct.

11 Q. Okay. You also indicated that after a few minutes, after
12 we moved back, I saw SAC Love -- SAC Dan Love walking in the
13 direction of the protest group and go out of my sight as he
14 talked with individuals in front of the protest group; correct?

15 A. Yes.

16 Q. That's in your report; correct?

17 A. Correct.

18 Q. Your words; correct?

19 A. Yes.

20 Q. And you are referencing SAC Love; correct?

21 A. That's correct.

22 Q. Your boss; correct?

23 A. No.

24 Q. You also indicate in the report that you saw over 20
25 protesters who were wearing holsters and sidearms; correct?

Adam Sully - Cross

1 A. Repeat on which date.

2 Q. On the 12th.

3 A. Yes.

4 Q. You saw protesters carrying guns; correct?

5 A. In the report, yes. That's what I put.

6 Q. On that day, sir, you saw protesters carrying guns; fair?

7 A. Correct.

8 MR. TANASI: Thank you. Nothing further.

9 THE COURT: All right. It's 12:00, so let's go ahead
10 and take our lunch break. We are going to take a little bit of
11 a longer lunch break today. What time, Aaron?

12 COURTROOM ADMINISTRATOR: 1:15, Your Honor.

13 THE COURT: Till 1:15.

14 During this lunch break, I do remind all the jurors
15 that you are not to discuss this case with anyone nor to permit
16 anyone to discuss it with you. You may speak to your fellow
17 jurors about other things, but not about this case.

18 If you do go outside to stretch, or I think we did
19 have a smoker, please remember to keep the button on, so
20 whether you have a jacket on or take the jacket off, keep your
21 juror button on. And please let me know if anybody
22 inadvertently says anything to you in elevator or elsewhere
23 about the case.

24 Also, do not read or listen to or view anything that
25 touching upon the case. Please do not perform any research or

Adam Sully - Cross

1 any independent investigation about the case and do not form
2 any opinion about the case until after we have provided you
3 with all the testimony, the evidence, you've heard closing
4 arguments, and you are provided with the jury instructions of
5 the law that will guide you during the deliberation process.

6 So, we will stand now for the jury so they can take
7 their lunch break. We'll have them back here at 1:15.

8 Likewise, Special Agent Sully, after the jury exits
9 the courtroom, then you may as well go have your lunch break --

10 THE WITNESS: Thank you.

11 THE COURT: -- and stretch, and we'll ask you to
12 please be back here by 1:15.

13 (Jury out.)

14 THE COURT: All right. So, the jury has left the
15 courtroom.

16 And Mr. Leventhal, I just wanted to give you a couple
17 citations here. *United States v. Everett*, E-V-E-R-E-T-T, Ninth
18 Circuit case, an individual need not be indicted to be
19 considered a coconspirator for the purposes of Rule
20 801(d) (2) (E), likewise, *United States v. Williams*, also a Ninth
21 Circuit case more recent.

22 MR. LEVENTHAL: And I apologize, Your Honor. Can you
23 repeat that citation?

24 THE COURT: Yes. So it's *United States v. Everett*,
25 E-V-E-R-E-T-T, 692 F.2d 596 is the first Ninth Circuit case.

Adam Sully - Cross

1 And then the later more recent Ninth Circuit case is *United*
2 *States v. Williams*, 989 F.2d 1061.

3 MR. LEVENTHAL: Thank you.

4 THE COURT: All right. So we're going to go ahead
5 and take a break. Do we need to come back here before 1:15?
6 We're just giving one juror some extra time, because they need
7 to make an important phone call with an employer.

8 So, if there was an issue that we needed to talk
9 about outside the presence of the jury, it would be a good time
10 to do so, so we don't waste their time.

11 MR. MARCHESE: Not as of right now. I can't think of
12 anything.

13 THE COURT: All right. So we'll just be back here at
14 1:15 ready to start.

15 MR. MARCHESE: Thank you.

16 COURTROOM ADMINISTRATOR: Off record.

17 (Recess, 12:02 p.m. Resumed 1:19 p.m. Jury out.)

18 THE COURT: Thank you. You may be seated.

19 Aaron, if you could bring in the jury.

20 COURTROOM ADMINISTRATOR: Yes, Your Honor.

21 THE COURT: And we will be taking our next break at
22 2:55.

23 MR. LEVENTHAL: Thank you.

24 (Jury in.)

25 THE COURT: Everyone may be seated. We are joined by

Adam Sully - Cross

1 the jury, and we have Special Agent Sully back on the witness
2 stand.

3 Mr. Tanasi, did he finish -- did you finish with your
4 cross-examination?

5 MR. TANASI: I am all done. Thank you, Your Honor.

6 THE COURT: Okay. Mr. Marchese?

7 MR. MARCHESE: Thank you, Your Honor.

8 THE COURT: Go ahead.

9 CROSS-EXAMINATION

10 BY MR. MARCHESE:

11 Q. Good afternoon, Special Agent Sully. My name is Jess
12 Marchese. I represent Eric Parker.

13 A. Good afternoon.

14 Q. All right. So, I'm just going to mainly focus on
15 April 14th of 2014 and what you perceived in your role on that
16 day.

17 So, at what point did you get to Toquop Wash
18 approximately time-wise?

19 A. Could you repeat the date for me?

20 Q. April 14th, 2014.

21 A. I was not there on April --

22 Q. I'm sorry. April 12th. I apologize. I am reading
23 something else. April 12th.

24 A. Okay. Approximately what time -- I'm sorry. You threw me
25 off with the date. Repeat the question one more time for me.

Adam Sully - Cross

1 Q. On April 12th --

2 A. Uh-huh.

3 Q. -- 2014, what time did you get to the Toquop Wash?

4 A. Let's see. Estimate around 11:25, 11:30.

5 Q. Okay. And then at some point in time, you went down into
6 the wash. Is that fair to say?

7 A. Yes.

8 Q. Okay. And that was behind the BLM gate that was erected;
9 correct?

10 A. Correct.

11 Q. And that gate was erected under the southbound freeway of
12 the I-15; correct?

13 A. Correct.

14 Q. Okay. And I'm going to publish what's already been marked
15 and brought into evidence as Exhibit 132 for a moment.

16 Brian.

17 COURTROOM ADMINISTRATOR: What number, Mr. Marchese?

18 MR. MARCHESE: It's 132, Aaron. Thank you.

19 COURTROOM ADMINISTRATOR: Thank you, sir.

20 (Exhibit 132 being played.)

21 BY MR. MARCHESE:

22 Q. Stop it there, Brian.

23 And for the record, this is approximately -- in the
24 upper corner of this is UTC time 19:22:32.

25 Do you see the area where you were at depicted on

Adam Sully - Cross

1 this particular screenshot?

2 A. Yes.

3 Q. Okay. And can you just maybe do a dot or an X or
4 something that you are comfortable with just to show the jury
5 where you were.

6 So, is that a pickup truck?

7 A. It's a Ford Expedition, an SUV.

8 Q. Okay. So were there -- next to it, is that a pickup truck
9 or --

10 A. I don't recall.

11 Q. All right. You had mentioned on direct examination that
12 you were standing next to an agent. Who was that agent that
13 you were standing next to?

14 A. Special Agent Jason Curry.

15 Q. Okay. Was anyone else next to you?

16 A. I know at some point Special Agent Michael Hauck was as
17 well.

18 Q. Okay. So, it was the three of you at that particular SUV?

19 A. Yes.

20 Q. Okay. What was directly in front of you to your
21 recollection?

22 A. Let's see. In front of me, I know I saw the -- the marked
23 law enforcement vehicles that were just -- well, you can see
24 the three there that are closest to that gate, and then that
25 one vehicle. I don't recall anything else in front of me.

Adam Sully - Cross

1 Q. Okay. And Brian, I am going to ask you to go back to
2 29:07, please.

3 Now, is this a better depiction of where you were
4 located at that time on that day on the April 12th incident?

5 A. Yes, I can still see that vehicle.

6 Q. It's closer up of where you would have been; correct?

7 A. Correct.

8 Q. All right. And please indicate that on the -- on the
9 screen for the jury. Thank you.

10 Now, it was your testimony that you didn't see anyone
11 pointing a firearm from the BLM at the crowd; is that correct?

12 A. That's correct.

13 Q. Now, I want to turn your attention to a memorandum of
14 activity that you authored on April 15th of 2014. Do you
15 remember authoring that?

16 A. Yes.

17 Q. Okay. And in that particular memorandum of activity, you
18 delineated what you remember that day as a part of your
19 investigation. Fair to say?

20 A. Correct.

21 Q. Okay. And that would have been a fair and accurate
22 depiction of what you remember; correct?

23 A. Yes.

24 Q. You wouldn't have left anything out important on that
25 particular memorandum; correct?

Adam Sully - Cross

1 A. That's correct. I would not have.

2 Q. Okay. Because that's something that might be used at a
3 later time for you to go back and review or maybe even testify
4 in court based upon. Fair to say?

5 A. Correct.

6 Q. Okay. On direct examination, you made reference to an
7 individual on the northbound bridge. Do you remember the
8 government asked you some questions about an individual on the
9 northbound bridge with a rifle?

10 A. Yes, I recall that.

11 Q. Okay. And it was your testimony that that individual had
12 dark facial hair; correct?

13 A. That's correct.

14 Q. Okay. Yet you couldn't remember his clothing; correct?

15 A. I do not.

16 Q. You could remember his gender which was male; correct?

17 A. Correct.

18 Q. And couldn't remember if the individual had anything on
19 his head; correct?

20 A. I could not remember.

21 Q. And it was your testimony that this individual briefly
22 raised the weapon and pointed it in the direction of the BLM
23 officers; is that a correct statement?

24 A. That's what I saw, yes.

25 Q. Okay. However, in your memorandum of activity, authored

Adam Sully - Cross

1 on April 15th of 2015, isn't it true that you made no mention
2 of an individual on the northbound bridge with facial hair that
3 was male that you could not indicate whether -- what he was
4 wearing, raising his rifle and pointing it in the direction
5 briefly of the BLM?

6 A. In that report, I don't specifically mention that. I
7 think I grouped that in with the six individuals I saw with
8 rifles.

9 Q. Okay. But in that particular report, you didn't
10 specifically reference an individual on the northbound bridge
11 that was male with dark facial hair briefly raising his weapon
12 and pointing it at the BLM; is that correct?

13 A. That's correct.

14 Q. Now, you've also met with the government and the FBI on
15 numerous occasions, but I want to point you --

16 MS. CREEGAN: Your Honor, assumes facts not in
17 evidence.

18 BY MR. MARCHESE:

19 Q. Have you met with the FBI previously before coming to
20 court today?

21 A. Yes.

22 Q. Okay. And have you met with the government before coming
23 to court today?

24 A. Yes.

25 Q. How many times did you meet with the FBI?

Adam Sully - Cross

1 A. Twice.

2 Q. How many times did you meet with the government?

3 A. Three times?

4 Q. Okay. I want to turn your attention to February 24th of
5 2015. If I was to tell you that you met with the FBI on that
6 day, in this particular courthouse, would that -- would you
7 disagree with that statement?

8 A. I don't recall the exact date.

9 Q. Okay. But in that general time frame, you met with the
10 FBI and several individuals from the United States Attorney's
11 Office on that particular day. Do you remember that?

12 A. Yes.

13 Q. And on that particular day, that was just kind of a
14 summary of everything that you had seen and memorialized based
15 upon your investigation from this alleged incident; is that
16 correct?

17 A. That's correct.

18 Q. They asked you a bunch of questions about what you
19 remembered; correct?

20 A. Yes.

21 Q. Okay. And they also gave you copies of previous documents
22 that you had authored; correct?

23 A. Yes.

24 Q. And they gave you an opportunity to change those documents
25 if there was any clarifications that you wanted to make;

Adam Sully - Cross

1 correct?

2 A. Yes.

3 Q. And isn't it true on that particular day, that you were
4 given the opportunity to make changes, and the only change that
5 you wanted to make was one particular change. Does that sound
6 correct?

7 A. I don't recall, honestly, because I know there was a
8 photograph as well. And I can't remember if it was at that
9 meeting, so I don't recall exactly what changes were made.

10 Q. Okay. Well, if I was to tell you that the one change that
11 you wanted to make was just in reference to your
12 responsibilities that you were working in an undercover
13 capacity during the BLM operation in April of 2014. Would that
14 sound correct?

15 A. Yes, I believe so. I know that was one correction.

16 Q. Okay. Would it also sound correct that you did not bring
17 up an individual on the northbound bridge with dark facial
18 hair, that you couldn't tell what he was wearing, briefly
19 raising his weapon towards the BLM and pointing it at them?

20 A. At that date, I don't recall, no.

21 Q. Okay. Now, I also have down -- and correct me if I am
22 wrong. I apologize if I am, because taking notes and doing a
23 million things at once here.

24 You testified on direct examination that Dan Love was
25 not your supervising agent on April 12th, 2014, was that your

Adam Sully - Cross

1 testimony?

2 A. Yes.

3 Q. Okay. Dan Love -- you agree with me -- did work for the
4 BLM to your knowledge April 12th of 2014; correct?

5 A. Yes.

6 Q. And his title, on April 12th of 2014, was that he was the
7 Special Agent in Charge; is that correct?

8 A. That's correct.

9 MR. MARCHESE: No further questions.

10 THE COURT: Mr. Perez?

11 CROSS-EXAMINATION

12 BY MR. PEREZ:

13 Q. Good afternoon, Agent Sully. My name is Shawn Perez. I
14 represent Ricky Lovelien.

15 A. Good afternoon.

16 Q. Now, you had mentioned that you did identify Mr. Lovelien
17 as being at -- I guess it was the protest area?

18 A. No, this would have been the staging area off of State
19 Route 170.

20 Q. Okay. And you also mentioned something about the militia
21 camp. So this was not the militia camp?

22 A. That's correct.

23 Q. Okay. And how was Mr. Lovelien dressed at the time? Do
24 you recall?

25 A. I recall, like, a short sleeve -- it was either a green or

Adam Sully - Cross

1 camouflage shirt.

2 Q. He wasn't wearing fatigues or anything like that?

3 A. I don't recall.

4 Q. And then also in your report of April 15th, you did not
5 know his first name, Mr. Lovelien's first name; correct?

6 A. That's correct.

7 Q. Okay. When did you learn his first name?

8 A. When I was shown the -- from our intel analysts, when I
9 got the report of who to look for, at that time. And then when
10 I was writing the report, I didn't have that from them with me.
11 And so then afterwards, I knew -- I went back and looked at
12 that what we're given as far as people that were known to them,
13 and then put the two together.

14 Q. So you knew -- you knew his name before then? You just
15 didn't have the paper that would refresh your recollection of
16 who he was?

17 A. Yeah. I didn't bring that paper with me on the 11th to
18 that rally.

19 Q. What exactly was that document?

20 A. I don't recall.

21 Q. I mean -- well, obviously, you said they gave you a
22 picture of Mr. Lovelien?

23 A. Correct. This was people who they knew were either
24 affiliated or self-described militia that were coming into the
25 area. And I'm not sure if it was a DM -- Department of Motor

Adam Sully - Cross

1 Vehicle photograph. It was just a photograph that we were
2 given.

3 Q. Okay. Was there any other information given about
4 Mr. Lovelien?

5 A. Not that I recall.

6 Q. Okay. And do you know what militia Mr. Lovelien is
7 associated with, if any?

8 A. If it was -- from Montana. I don't remember if there was
9 a specific name.

10 Q. Are you aware that Montana has several different militia?

11 A. I was not aware of that.

12 Q. Does the name Montana -- Montana State Defense Force come
13 to mind as far as Mr. Lovelien?

14 A. No, it doesn't.

15 Q. Okay. And now, on the date of April 12th in the wash, did
16 you see Mr. Lovelien in the wash?

17 A. I did not.

18 Q. Did you see him anywhere on April 12th that you recall?

19 A. Not that I recall, no.

20 MR. PEREZ: Okay. I have nothing further. Thank
21 you.

22 THE COURT: Mr. Engel.

23 MR. ENGEL: Yes, ma'am.

24 CROSS-EXAMINATION

25

Adam Sully - Cross

1 BY MR. ENGEL:

2 Q. Thank you, Agent Sully, for being here today.

3 A. Thank you.

4 Q. My name is Todd Engel. I'm representing myself.

5 To the best of your knowledge, were there
6 approximately 134 law enforcement agents involved in this
7 operation?

8 A. I don't know that number.

9 Q. Would you agree that -- that the desert, this area that
10 you guys were performing this impoundment would be considered
11 to Cliven Bundy his place of employment? His place of work
12 where he herds cattle, does his daily operations, feeds them?

13 A. Yes.

14 Q. Has Cliven Bundy ever come to a location where you work to
15 protest with armed people?

16 MS. CREEGAN: Objection, Your Honor. Argumentative.

17 THE COURT: Sustained.

18 BY MR. ENGEL:

19 Q. Has Cliven Bundy ever come to a BLM facility that you are
20 aware of to protest?

21 A. Not that I'm aware of.

22 Q. It looks like you began your undercover assignment on 4/7.
23 Does that sound about right?

24 A. Yes.

25 Q. On 4/7, did you see any illegal activity?

Adam Sully - Cross

1 A. No.

2 Q. Did you see me on 4/7?

3 A. I don't recall.

4 Q. On 4/8, there is no reports of any illegal activity; is
5 that correct?

6 A. Not that I made, no.

7 Q. On 4/9, I have no reports of illegal activity anywhere in
8 any of my discovery. Is that a fair statement to say no
9 illegal activity occurred on 4/9?

10 MS. CREEGAN: Your Honor, objection. Personal
11 knowledge. Is Mr. Engel's question to the witness's knowledge?

12 THE COURT: Sustained. Do you want to rephrase that?

13 BY MR. ENGEL:

14 Q. On 4/9, did you file any reports stating there was illegal
15 activity that occurred on that date?

16 A. I don't recall any -- yeah, myself filing any reports.

17 Q. Did you see me anywhere on 4/9?

18 A. Can you repeat that?

19 Q. Did you see me anywhere on April 9th?

20 A. I did not.

21 Q. On 4/10, did you observe any illegal activity?

22 A. Not that I recall.

23 Q. On 4/11, you stated that you went to a rally; is that
24 correct?

25 A. That's correct.

Adam Sully - Cross

1 Q. Between the hours of 10:00 and 3:00; correct?

2 A. Around about 10:30 to 3:30.

3 Q. You stated that you saw men with western clothing;
4 correct?

5 A. Correct.

6 Q. You saw folks with military-type clothing; correct?

7 A. Yes.

8 Q. Was there anything illegal about their military-type
9 clothing?

10 A. No.

11 Q. You also said you saw firearms at that rally; is that
12 correct?

13 A. That's correct.

14 Q. You saw holstered sidearms; correct?

15 A. Yes.

16 Q. Did you see anything illegal about the holstered sidearms?

17 A. No.

18 Q. You stated you saw rifles also?

19 A. Yes.

20 Q. Anything illegal about the rifles on that date?

21 A. No.

22 Q. On that date, you also stated that you saw four people on
23 top of a hill with guns; is that correct?

24 A. That's correct.

25 Q. To the best of your knowledge, they were doing nothing

Adam Sully - Cross

1 illegal; is that correct?

2 A. That's correct.

3 Q. On that date, Cliven Bundy was discussing issues
4 concerning, say, the revolution; is that correct?

5 A. Yes.

6 Q. Is discussions concerning the revolution illegal?

7 A. No.

8 Q. Was I at the rally on 4/11 to the best of your knowledge?

9 A. I don't know that -- the answer to that.

10 Q. You stated that you arrived on 4/12, the day of the
11 incident in question, at approximately 11:25 to 11:30; is that
12 correct? At post two. Sorry.

13 A. That's correct.

14 Q. Okay. And you stated that you were 100 -- approximately
15 100 yards behind other law enforcement vehicles?

16 A. Yeah, that was my estimate. Yes.

17 Q. Brian, can you pull up Exhibit 132 at 19:22:32, please.
18 Right there.

19 (Exhibit 132 being played.)

20 Q. You've stated for the record that this was your vehicle;
21 is that correct?

22 A. That was the vehicle I was behind.

23 Q. That you were behind. Excuse me.

24 A. Yes.

25 Q. Would it be safe to say that you -- under this situation,

Adam Sully - Cross

1 you would be evaluating everything around you?

2 A. Yes.

3 Q. You would be looking for threats in all directions; would
4 that be safe to say?

5 A. Primarily at that point, my area was focused to the front
6 where those people were.

7 Q. Would it be safe to say that you were communicating
8 visually with the other officers who would have been off to
9 your right? Off to this direction here?

10 A. No, I didn't have communication with them.

11 Q. Visual, would you be looking over there to see what they
12 are doing? Just kind of looking around?

13 A. Yes.

14 Q. Do you recollect this vehicle right here which would be
15 approximately, what? 30 yards from you?

16 A. I don't recall.

17 Q. You don't recall distance or if you were -- if you looked
18 that direction or --

19 A. Yeah. I mean, it was -- from the photo, it was there. I
20 don't recall, you know, as far as memory what the vehicle was
21 or anything.

22 Q. Okay. Brian, could you go to Exhibit 258, please? I
23 don't know how to get rid of those.

24 Do you recall seeing the gentlemen -- this vehicle
25 and the gentlemen standing around this vehicle?

Adam Sully - Cross

1 A. I don't recall that.

2 Q. Sir, may I ask you, did you aim your rifle at any of the
3 protesters that day?

4 A. I did not.

5 Q. You stated that you felt that you had the disadvantage in
6 the wash due to the elevation of the terrain; is that correct?

7 A. That's correct.

8 Q. Did you know that approximately a quarter to a half a mile
9 away, there was BLM agents up on the mesa who had a very -- a
10 much higher elevation than where the wash was?

11 A. I'm not aware of that.

12 Q. Were you aware that there was an FBI plane in the air?

13 A. No, I was not.

14 Q. Were you aware that there was a National Park Service
15 plane in the air?

16 A. No, I was not.

17 Q. Were you aware that there was a Metro helicopter in the
18 air?

19 A. No.

20 Q. You stated that it seems that people protest timber,
21 mining, and some -- and different things against the BLM. Is
22 that fair that you run into these protesters fairly regularly?

23 A. Not regularly, but, yes. It's fair to say that does
24 happen.

25 Q. So it would be a fair statement to say that Cliven Bundy

Adam Sully - Cross

1 isn't alone in his protests against the BLM?

2 MS. CREEGAN: Objection. Relevance.

3 THE COURT: Sustained.

4 BY MR. ENGEL:

5 Q. Were you familiar with the arrest of David Bundy on the
6 6th?

7 A. Yes.

8 Q. Were you aware that he received some abrasions to the side
9 of his face during that arrest?

10 A. I think I was made aware of that after that, yes.

11 Q. Were you aware of the tasing of Ammon Bundy on the 9th?

12 A. Yes.

13 Q. Would you agree that when people are tased, it puts holes
14 in their body and it uses an electrical shock?

15 MS. CREEGAN: Objection. Relevance.

16 BY MR. ENGEL:

17 Q. Would you agree that when a person is tased, that it can
18 be --

19 MS. CREEGAN: Objection. Relevance.

20 THE COURT: What's the relevance, Mr. Engel?

21 BY MR. ENGEL:

22 Q. Would you agree that somebody that has been tased can
23 receive minor injuries?

24 MS. CREEGAN: Objection. Relevance.

25 THE COURT: Mr. Engel, what is the relevance of this

Adam Sully - Cross

1 question?

2 MR. ENGEL: I'm sorry, Your Honor.

3 Q. Mr. Sully, to the best of your knowledge, did you receive
4 any injuries that day on April 12th?

5 A. No, I did not.

6 Q. Did any of your fellow officers, that you are aware of
7 that were standing around you, receive any injuries caused by
8 the protesters that day, physical injuries?

9 A. Physical injuries?

10 Q. Physical injuries.

11 A. No, not that I am aware of.

12 Q. So would it be safe to say that the only thing that was
13 hurt out there on that day would be the BLM agents' feelings?

14 MS. CREEGAN: Objection. Argumentative.

15 THE COURT: Sustained.

16 MR. ENGEL: No further questions, Your Honor.

17 THE COURT: Mr. Leventhal? Or Mr. Jackson, do you
18 want to go next?

19 MR. JACKSON: I have just got a couple of questions.

20 THE COURT: Sure.

21 CROSS-EXAMINATION

22 BY MR. JACKSON:

23 Q. Good afternoon, Mr. Sully. My name is Terrence Jackson.
24 I represent Gregory Burleson.

25 Did you see Mr. Burleson at the rally on April 11th,

Adam Sully - Cross

1 2014?

2 A. I'm sorry? Could you point him out to me?

3 Q. He's the gentleman sitting near the end of the table
4 there. He's got a little bit of a beard and a mustache.

5 A. Your Honor, can I stand just to -- I can't see behind that
6 screen.

7 THE COURT: You can go ahead and stand up.

8 THE WITNESS: No, sir. I don't recognize him.

9 BY MR. JACKSON:

10 Q. Okay. Now, you mentioned some talk about militias. Is it
11 illegal, per se, to belong to a militia?

12 MS. CREEGAN: Objection. Calls for legal conclusion.

13 BY MR. JACKSON:

14 Q. All right. Well, let me rephrase it.

15 Have you ever arrested anybody for merely being in a
16 militia?

17 A. No, I have not.

18 Q. And you said there were many people that the government
19 checked out who were in a militia that you believed were coming
20 to this Bundy demonstration? Rather than call it a protest,
21 this Bundy demonstration?

22 A. Yes, that's information that we were given.

23 Q. And they weren't -- they weren't arrested simply because
24 they were in a militia; is that correct?

25 A. Can you repeat the question, please?

Adam Sully - Cross

1 Q. They weren't taken into custody simply because they
2 were -- had been members or had been associated with a militia,
3 just because of that; is that right?

4 A. That's correct.

5 Q. In other words, they had to do some overt act or violate
6 some federal law before they could be taken into custody or
7 arrested for violation of a federal law; isn't that correct?

8 A. That's correct.

9 Q. Just being involved in a militia isn't a crime in this
10 country; is that right?

11 A. That's correct. It's not.

12 MR. JACKSON: Thank you. No further questions.

13 THE COURT: Mr. Leventhal.

14 MR. LEVENTHAL: Yes, thank you.

15 CROSS-EXAMINATION

16 BY MR. LEVENTHAL:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. My name is Todd Leventhal, and I represent Mr. Drexler
20 right there.

21 Special Agent Sully, you were asked on direct
22 examination how you felt. Do you remember a number of those
23 questions? How you felt?

24 A. Yes.

25 Q. One of your answers, amongst many, was you could not

Adam Sully - Cross

1 imagine how much anger was directed at law enforcement. Do you
2 remember giving that answer?

3 A. Yes.

4 Q. Okay. So, you were out there. And when you arrived on
5 April 12th, I believe you said you arrived at 10:30 in the
6 morning from Mesquite; correct?

7 A. That's correct.

8 Q. And you saw Metropolitan Police Department out there;
9 correct?

10 A. At point one, yes.

11 Q. And their law enforcement agency; correct?

12 A. Yes.

13 Q. Did you see any of them upholstering their pistols or
14 having weapons with them or on their person or out?

15 A. On their person but not out.

16 Q. Not out. Okay. Did you see anybody come up or point any
17 weapons at any Metropolitan police officers?

18 A. I did not.

19 Q. Okay. Did you see the Nevada Highway Patrol? Were they
20 out there?

21 A. Yes.

22 Q. And they are a law enforcement agency; correct?

23 A. That's correct.

24 Q. Same question. Did you see any of them have their long
25 guns out or guns put on anybody at that time?

Adam Sully - Cross

1 A. I don't recall that, no.

2 Q. Okay. You indicated that after a while, you saw many
3 different license plates come in from different states. Do you
4 remember giving that testimony?

5 A. On the 11th?

6 Q. Yes.

7 A. Yes.

8 Q. Okay. And so you -- you were curious, but your job title
9 changed from -- on April 6 or April 7th; correct?

10 A. No.

11 Q. Well, you indicated that on April 6th, there was Dave
12 Bundy's arrest; correct?

13 A. Correct.

14 Q. And at that time, you were transporting pilots, I believe
15 you said?

16 A. Before that time?

17 Q. Yes.

18 A. That was one of the duties was escorting.

19 Q. Escorting.

20 A. Yes, the pilots.

21 Q. And when I say your responsibilities changed, I am merely
22 suggesting that you now went undercover; correct?

23 A. Yes.

24 Q. Okay. And that would have been on the 7th you went
25 undercover; correct?

Adam Sully - Cross

1 A. For a short time on the 7th, yes.

2 Q. Okay. And you did so because of, you indicated, David
3 Bundy's arrest; correct?

4 A. We did so because of the rally that was going to be held
5 on the 7th.

6 Q. Okay. So, it had nothing to do with Dave Bundy's arrest
7 going viral?

8 A. That's what we -- we responded to the report on the -- it
9 was the Bundy Blogspot about, "Yeah, they have my son. They
10 have my cattle. A range war starts tomorrow."

11 Q. Whatever it said, whether it was true or false, it went
12 viral; correct?

13 A. Correct.

14 Q. Okay. And that was where David Bundy was standing next to
15 his car. We've seen it; correct? In front of his car?

16 A. Yes.

17 Q. And you saw it. He was holding an iPad; correct?

18 A. I have seen the video. I was not present during that --

19 Q. I understand, but you saw the video; correct?

20 A. That's correct.

21 Q. Okay. And that's what sort of was another decision or
22 another element in the process of your decision making to go
23 undercover; correct?

24 A. From seeing that video?

25 Q. Not from seeing it, from it happening. From it going

Adam Sully - Cross

1 viral.

2 A. It was the -- the response from Cliven Bundy on that
3 website --

4 Q. Okay.

5 A. -- about declaring "The range war starts tomorrow," is
6 what -- why we wanted to see what the response was.

7 Q. Okay. And whether it was true or false, the video that
8 you saw, it appeared that he was just standing there doing
9 nothing. Whether or not he was in a closed area, a non-closed
10 area, that was the message that went out; correct?

11 A. That was the message that went out.

12 Q. That's the message that went out. So that's what people
13 saw, the public saw; correct?

14 A. I don't know what they -- what videos they saw, but --

15 Q. It would have been one of them. You indicated it was on a
16 blogspot or something; correct?

17 MS. CREEGAN: Objection, Your Honor. This misstates
18 his testimony. He saw the post about range war I believe was
19 his direct testimony.

20 BY MR. LEVENTHAL:

21 Q. Did you see the video?

22 A. Yes, I've seen the video.

23 Q. Okay. And you saw in that video that David was taken down
24 by a few different BLM agents; correct?

25 A. I don't recall the whole video though.

Adam Sully - Cross

1 Q. Okay. Do you recall the dogs barking? German Shepherds
2 barking while he was being taken down?

3 A. I don't.

4 Q. Okay. Do you recall seeing what was looked at as snipers
5 up on a ridge? Do you recall that?

6 A. From that video, no, I don't.

7 Q. You don't? Okay. Now, on April 9th, you saw when
8 Margaret Houston, a 58-year-old woman, was taken down?

9 A. On April 9th?

10 Q. Yes.

11 A. I was not there, no.

12 Q. Okay. Were you in an undercover capacity still on
13 April 9th?

14 A. No, I was not.

15 Q. Okay. So you have not seen that video?

16 A. I have seen that video, yes.

17 Q. Okay. And so -- and you know that that video also went
18 viral; correct?

19 A. That's correct.

20 Q. Okay. And that's where she was -- they call it
21 clotheslined, where she was picked up from behind; correct?

22 MS. CREEGAN: Objection, Your Honor. Argumentative.

23 THE COURT: Ask him a question about --

24 BY MR. LEVENTHAL:

25 Q. Yes. And this all goes back to you indicated that you

Adam Sully - Cross

1 could not imagine how much anger was directed at law
2 enforcement.

3 MS. CREEGAN: Relevance.

4 MR. LEVENTHAL: It's relevant. That was his answer.
5 That's how he felt. And he's also indicated that he's seen
6 these videos. I mean, I can move on. It's just --

7 THE COURT: It's overruled. You can keep going.

8 BY MR. LEVENTHAL:

9 Q. Did you see that -- you saw that video?

10 A. Yes.

11 Q. Okay. And you saw how she was taken down; correct?

12 A. Correct.

13 Q. And she was thrown to the ground. You saw that; right?

14 MS. CREEGAN: Objection. Argumentative.

15 THE COURT: Well, it's asked and answered. He said
16 he saw the video.

17 BY MR. LEVENTHAL:

18 Q. On April 9th, you saw the tasing of Ammon Bundy; correct?

19 A. That's correct.

20 Q. Okay. And again, we've seen that. You saw that BLM put
21 up a First Amendment zone; correct?

22 A. I didn't see them put it up. But, yes. I saw them in the
23 area.

24 Q. And that went viral; correct?

25 A. Yes.

Adam Sully - Cross

1 Q. And when I say "viral," I mean it went out on the public
2 airwaves; right?

3 A. I understand. Yes.

4 Q. Okay. And one of your jobs was escorting pilots, you
5 indicated, amongst others; correct?

6 A. That's correct.

7 Q. Okay. And so you knew that the BLM was also shooting
8 cows; correct?

9 A. No, that was not what they were doing.

10 Q. Okay. And do you know whether or not information went
11 out -- again, truthful, not truthful -- about whether or not
12 BLM was stealing cattle?

13 A. Yes.

14 Q. Okay. And so there was -- there was some news that BLM
15 was stealing cattle; correct?

16 A. Correct.

17 Q. Again, truth, not truth, it went out; correct?

18 A. That's correct.

19 Q. Okay. So you went undercover. And on April 7th, you
20 indicated and you told us that you attended the rally; correct?

21 A. Yes.

22 Q. Okay. And at that rally, you indicated that you had --
23 and I am going to have to clarify this. You either had
24 pictures of identifying different people in known or
25 self-described militia groups? Did you have those on you?

Adam Sully - Cross

1 A. I didn't have them on me. I don't think we had those on
2 the 7th.

3 Q. No? Were you taking pictures of different people at the
4 rally?

5 A. No, I was not.

6 Q. You were not. So it was on the 11th then that you had
7 pictures of this so-called self-described known militia people?

8 A. That's correct.

9 Q. Okay. And were you ever briefed, or did you have any
10 meetings regarding these self-described known militia people?

11 A. We would have been briefed of their identity.

12 Q. Okay. And how would that happen?

13 A. We had intel analysts that were there at the command post
14 working.

15 Q. Okay. And so you would have had them on your phone or
16 some other mechanism to see who was there?

17 A. No.

18 Q. No. How would you recognize somebody then? Did you look
19 at them and then go to the rally?

20 A. Yeah, I was, prior to the rally, looking at the
21 photographs.

22 Q. Okay. So you spent -- you indicated you spent
23 approximately three hours at the April 11th rally; correct?

24 A. I -- it was a little longer than that on the
25 April 11th rally. We were probably there closer to five hours.

Adam Sully - Cross

1 Q. Five hours. Okay. And on the April 7th rally, you were
2 there for -- how much -- how long were you there?

3 A. About three hours.

4 Q. Three hours? Okay. Now, in your undercover capacity,
5 knowing that there was a lot of misinformation that went out,
6 did you do anything to dispel any of the rumors?

7 A. That was not our role there.

8 Q. Okay. Did you do anything to further any of the rumors?

9 A. No.

10 Q. So, you are in an undercover capacity. Are you talking to
11 people while you are out there?

12 A. Yes.

13 Q. And I would assume you are not talking about the weather.
14 Are you talking about what's happening with the Bundys?

15 A. There was a variety of different topics. They were more
16 than willing to share their views.

17 Q. Would it be fair to say that people were there for
18 different reasons?

19 A. I guess I would have to have you clarify that.

20 Q. Okay.

21 A. I don't know what -- what you are asking.

22 Q. Okay. Were there people there because they cared about
23 cows?

24 A. I would assume so.

25 MS. CREEGAN: Objection, Your Honor. Lack of

Adam Sully - Cross

1 personal knowledge.

2 MR. LEVENTHAL: He was there. I am asking him if he
3 knows.

4 THE COURT: If he knows.

5 THE WITNESS: I don't recall having a conversation
6 with someone saying they cared about cows.

7 BY MR. LEVENTHAL:

8 Q. There weren't a lot of people that would drive for hours
9 because of cows; correct? Or you don't know that?

10 A. I don't know that.

11 Q. And you were there for seven house on one rally, and you
12 intermingled with people; correct?

13 MS. CREEGAN: Objection. Misstates testimony. He
14 said five and three.

15 THE COURT: He said five and three. Go ahead and
16 restate the questions.

17 BY MR. LEVENTHAL:

18 Q. I apologize. Five hours on April 11 you were there, and
19 you mingled and spoke to people; correct?

20 A. That's correct.

21 Q. And you did so in an undercover capacity; correct?

22 A. That's correct.

23 Q. So you had to assume the role as, I guess, the protesters;
24 correct? That's what you do; right?

25 A. Yes.

Adam Sully - Cross

1 Q. And as you assume the role, you are then speaking to them
2 about the different reasons why they were there. Why were you
3 there? What was your -- what was your -- sort of your identity
4 as being there?

5 A. We were just there because we heard it on the radio and
6 wanted to come see what was going on.

7 Q. Okay. So you didn't get involved in any sort of the
8 politics of all of it?

9 A. No.

10 Q. Okay. And you didn't have any discussions with anybody, I
11 guess, about the politics of all of it, whether BLM was right
12 or wrong; correct?

13 A. No, I don't recall that.

14 Q. No?

15 A. No.

16 Q. Now, I noticed, at the second rally, the
17 April 11th rally -- and we saw it earlier. I don't need to
18 play it for you again. But there were a lot of camera crews in
19 the front there. Did you see that?

20 A. That was on April 11?

21 Q. Correct.

22 A. Correct.

23 Q. And those camera crews were from major news organizations;
24 correct?

25 A. Yes.

Adam Sully - Cross

1 Q. Okay. FOX News was there. ABC was there. CNN was there.
2 Do you remember seeing those?

3 A. I do know FOX News was there. I can't say for sure which
4 other ones were there.

5 Q. Okay. But there were major news organizations?

6 A. Yes.

7 Q. And there were a number of them; correct?

8 A. Correct.

9 Q. And on the video, we also saw people you identified to be
10 Cliven Bundy's security team; correct?

11 A. Yes.

12 Q. Okay. And I notice that they had somewhat of a
13 sophisticated way of communicating. They had earpieces. Did
14 you recognize that?

15 A. Yes.

16 Q. Okay. Now, on direct examination, you indicated that on
17 April 11th -- are you with me? On the evening? April 11th?

18 A. On the evening of April 11th?

19 Q. Yes.

20 A. Okay.

21 Q. You were in Mesquite; correct?

22 A. I was -- excuse me?

23 Q. Were you in Mesquite?

24 A. Yes.

25 Q. Okay. And you had a meeting with SAC Love and ASAC

Adam Sully - Cross

1 Stover?

2 A. No, I did not.

3 Q. You weren't involved in that?

4 A. No.

5 Q. Were you aware that on the April 11th, that the BLM was
6 going to close down operations?

7 A. Yes.

8 Q. Okay. You were. Okay. And so you stayed in Mesquite
9 that night; correct?

10 A. Yes.

11 Q. And you didn't get back to Bunkerville until the morning
12 of April 12th; correct?

13 A. That's correct.

14 Q. And you were aware that it was going to close down
15 April 11th? You were aware that BLM was closing operations;
16 correct?

17 A. That's what I was told, yes.

18 Q. Okay. So that information, you would assume, would get
19 out to the public; correct? Maybe?

20 A. That would have been, yeah, a different level than -- than
21 I was at --

22 Q. Okay.

23 A. -- so I'm not sure who was responsible for that.

24 Q. And so if that information got out to the public and the
25 public thought that BLM was closed, closing down operations,

Adam Sully - Cross

1 because that's what you knew it to be on the 11th, they
2 probably wouldn't have expected BLM to be there on the 12th; is
3 that safe to assume?

4 A. No.

5 Q. Okay. So, when something gets closed down, your testimony
6 is, is that it doesn't have to always all be closed down?

7 A. There was a variety of trailers and structures. It would
8 have been unreasonable for all that to get taken out of there
9 the evening of the 11th.

10 Q. And I understand that. I understand your point of view,
11 and I guess I'm asking you to speculate, so I don't want to do
12 that.

13 Now, at 10:30 in the morning, you were at post one;
14 correct?

15 A. At 10:30, I would have been down at the incident command
16 post.

17 Q. Okay. And then now when you arrived at post two -- I
18 apologize. What time was that at approximately again?

19 A. At post two, estimated around 11:25, 11:30.

20 Q. And when you got there, you were told that there were more
21 people coming; correct?

22 A. That's correct.

23 Q. And that's why you went down there, because you heard more
24 people were coming down in that area; correct?

25 A. That's correct.

Adam Sully - Cross

1 Q. And when you got there, what was your first -- what was
2 the first thing you saw in terms of the protesters? Were they
3 under the bridge at that point?

4 A. There was two overpasses, and I recall some underneath
5 both of those, yes.

6 Q. Protesters underneath both of them?

7 A. There was people underneath both of those overpasses that
8 were there.

9 Q. And just for clarification, you have never seen
10 Mr. Drexler; have you? I can have him stand up for you.

11 A. No, I have not.

12 Q. He wasn't at any of your rallies that you were at;
13 correct?

14 A. I don't recall seeing him.

15 MR. LEVENTHAL: Thank you very much.

16 THE COURT: Mr. Jackson?

17 MR. JACKSON: I have already had my chance, Your
18 Honor.

19 THE COURT: I am losing track. Did we have all six?
20 Okay. Any redirect, Ms. Creegan?

21 MS. CREEGAN: May we have a moment, Your Honor?

22 THE COURT: Yes.

23 (Pause in the proceedings.)

24 MS. CREEGAN: No redirect, Your Honor.

25 THE COURT: All right. Thank you, Special Agent

Alex Ellis - Direct

1 Sully --

2 THE WITNESS: Thank you.

3 THE COURT: -- for coming in today. Please be
4 careful on your way out with the steps on your way down.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Government may call its next witness.

7 MR. MYHRE: Thank you, Your Honor. We call Alex
8 Ellis.

9 ALEX ELLIS,
10 having been duly sworn, was examined and testified as follows:

11 COURTROOM ADMINISTRATOR: State your full name and
12 spell it for the record.

13 THE COURT: Good afternoon, Mr. Ellis. You are going
14 to come up and take a seat right here to my right. Watch your
15 step. A couple steps up there.

16 (Witness sworn.)

17 THE WITNESS: My name is Alex Ellis A-L-E-X
18 E-L-L-I-S.

19 MR. MYHRE: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. MYHRE:

22 Q. Good afternoon, Mr. Ellis. How are you?

23 A. Good. And you?

24 Q. Good. Thank you. What's your current occupation?

25 A. I work in the IT field currently.

Alex Ellis - Direct

1 Q. And back in April of 2014, what was your occupation?

2 A. I would have been working as a busboy at the Red Mountain
3 Spa Restaurant.

4 Q. Now, were you also attending school?

5 A. Yes, I was a senior in high school.

6 Q. How old were you at the time?

7 A. I was 17.

8 Q. Now, in -- around the 11th of April of 2014, did you have
9 occasion to travel to Bunkerville, Nevada?

10 A. I did.

11 Q. Okay. And did you go with anybody?

12 A. I went with my friend Michael Flynn at the time.

13 Q. And what -- what caused you to travel to Bunkerville?

14 A. After reading some local news articles and seeing what was
15 going on there, I just honestly was curious. I wanted to see
16 it for myself.

17 Q. And who is Mr. Flynn?

18 A. He was a friend of mine. He was working as a reporter at
19 the time for the St. George Independent News.

20 Q. And you've said you were going to travel down to -- to
21 Bunkerville just to -- out of curiosity, basically?

22 A. Right. I was. And the way Michael got involved, I
23 stopped for a drink at a local coffee shop before leaving, and
24 saw him, and asked if he'd like to leave with me. And he said
25 "Yes."

Alex Ellis - Direct

1 Q. And around what time did you get down to Bunkerville?

2 A. It was a little later in the evening. Probably close to
3 5:00 p.m.

4 Q. And do you remember the route that you took once you got
5 down there?

6 A. I do.

7 MR. MYHRE: Your Honor, may we recall up Exhibit 330,
8 please?

9 THE COURT: Yes.

10 BY MR. MYHRE:

11 Q. To your right is a monitor. And does that appear to be a
12 map of the Bunkerville area?

13 A. Yes.

14 Q. And are you familiar with State Route 170?

15 A. Yes.

16 Q. Okay. And can you just -- if you click on the right side
17 of your screen, you will see a little crayon there. If you
18 could just trace the route for us that you came into the
19 Bunkerville area.

20 A. Great.

21 Q. So, now how did you know where to be going for -- to --
22 for this particular area? Did you have a map or something or
23 did you just --

24 A. Well, we knew it was close to Mesquite, so we took the
25 I-15 to Mesquite and then pulled up a map off of Google from

Alex Ellis - Direct

1 there.

2 Q. And what were you looking for?

3 A. The ranch, the protest site.

4 Q. So when you pulled up into that general area where you
5 have your line, did you find a protest site?

6 A. We did. We parked a little bit south of it, around there,
7 south of the bridge, and found the protest site further north
8 there.

9 Q. Okay. You have drawn two circles, one just south of the
10 bridge and then north of the bridge.

11 When you pulled up south to the bridge, did you --
12 did you observe anything on that road that was off to the left
13 from there?

14 A. Yes, we did.

15 Q. Okay. Did you try to drive up that road?

16 A. No, we did not.

17 Q. And was there a reason you didn't?

18 A. As we walked past it, we saw several men -- several men in
19 camouflage holding rifles, and so that discouraged us from
20 going down that way.

21 Q. If I could ask you to refer to those exhibit books there,
22 and if you would turn to Exhibit 327, please.

23 Do you have that, Mr. Ellis?

24 A. Yes.

25 Q. And does -- what is Exhibit 327?

Alex Ellis - Direct

1 A. Looks to be a close-up of the map which is south of the
2 bridge.

3 Q. Is that a fair and accurate depiction of the area as you
4 observed it on April 11th, 2014?

5 A. It is.

6 MR. MYHRE: Your Honor, may we offer Exhibit 327?

7 THE COURT: Any objection to 327?

8 MR. MARCHESE: None from Parker.

9 MR. TANASI: None from Stewart.

10 MR. LEVENTHAL: None from Drexler.

11 MR. ENGEL: None from Engel.

12 MR. PEREZ: None from Lovelien.

13 MR. JACKSON: No objection from Burleson.

14 THE COURT: All right. Exhibit 327 will be admitted.
15 Did you wish to publish it now?

16 MR. MYHRE: Yes, Your Honor, please.

17 THE COURT: Go ahead.

18 (Exhibit 327 admitted.)

19 BY MR. MYHRE:

20 Q. Now, Mr. Ellis, it should be on your screen there, so if
21 you could mark on this map where you saw people with the guns.

22 And do you recall approximately how many were there?

23 A. Several, maybe five, six.

24 Q. And what -- I'm sorry. Go ahead.

25 A. We didn't stay too long.

Alex Ellis - Direct

1 Q. Did you observe what they were doing?

2 A. Looked like they were just standing guard.

3 Q. Now, you followed this road then north of the bridge; is
4 that correct?

5 A. Yes, this one.

6 Q. And when you got there, did you see a stage?

7 A. North of the bridge.

8 Q. Yes. Did you see a stage there?

9 A. Yes.

10 Q. And did you see any people around in that area?

11 A. Yeah. Not very many. It was later in the evening, so it
12 seemed by then many of them had either gone back home or to
13 their cars.

14 Q. So what did you do?

15 A. We walked the site up north past the stage a bit and back
16 down. Talked to several people.

17 Q. And what did you talk to them about?

18 A. Asked them why they were there, and what they thought of
19 the whole situation.

20 Q. And so was this in connection with Mr. Flynn's job of
21 reporting?

22 A. Yes.

23 Q. Approximately how many people do you think were in that
24 area when you were there?

25 A. By the time we got there? Not very many. Maybe 60, 70.

Alex Ellis - Direct

1 Q. Did you observe any people wearing firearms at all?

2 A. Several, yes.

3 Q. And what type of firearms?

4 A. Mostly handguns.

5 Q. And how were they -- were they carrying them and holstered
6 or otherwise?

7 A. On their sides, yes, in holsters.

8 Q. Are you familiar with firearms?

9 A. Yes.

10 Q. Do you own firearms yourself?

11 A. Yes.

12 Q. Was -- in terms of just speaking with people there, how
13 would you -- did you form an assessment generally of what the
14 mood of the people was?

15 A. On the 11th, at that time, relaxed mostly.

16 Q. Did you see any speakers or presenters on the stage or in
17 and around the stage?

18 A. Not on the 11th.

19 Q. Did you notice any signage or posters or anything of that
20 nature?

21 A. Yes.

22 Q. Did you read them, or do you recall what they said?

23 A. Mostly anti-BLM slogans, statements of support for the
24 Bundys. "We're here till the cattle come home." Things to
25 that effect.

Alex Ellis - Direct

1 Q. And the people that you did see though, just -- were they
2 just standing around, or were they just talking among
3 themselves? What did you observe them doing?

4 A. Not much activity. Standing, talking.

5 Q. So did you decide to go back then home that evening?

6 A. Yeah. We figured that we weren't going to get much
7 information that day.

8 Q. Were you planning to go down the next day?

9 A. Yes. Michael suggested we come back the next day earlier
10 to catch more people.

11 Q. Did you have, at that time, any information that there
12 were any events planned for the next day?

13 A. No.

14 Q. So the next day arrives. Do you return?

15 A. Sorry?

16 Q. The next day arrives. Do you return to Bunkerville?

17 A. Yes.

18 Q. Okay. And when you drove there this time, approximately
19 what time of day was it?

20 A. We got there much earlier, around 7:00, maybe 7:30 a.m.

21 Q. Did you drive in the same route that you did previously?

22 A. Yes.

23 Q. And this time, when you drove in there, did you notice a
24 change from the previous day?

25 A. There were many more people. A little more activity.

Alex Ellis - Direct

1 Q. When you say more people, were there -- did you see more
2 vehicles or just more bodies walking around? How would you --

3 A. Both.

4 Q. How did you make that assessment?

5 A. Both. It was more difficult to find a parking spot, and
6 there was many more bodies, much more activity.

7 Q. Now, when you came around that bend, as you are coming
8 around SR-170, did you look off to the left again where you had
9 seen those men the previous day?

10 A. Uh-huh. And they were there again.

11 Q. Okay. Did you notice anything else in that area,
12 trailers, trucks, cars parked? Anything of that nature?

13 A. A little south to the road in a little dirt lot, there
14 were some horsemen and a handful of horse trailers.

15 Q. Did you -- do you recall how many horses were there?

16 A. Two dozen maybe.

17 Q. Do you have any -- did you get out and speak to anybody
18 about what the horses were doing there or anything of nature?

19 A. We did.

20 Q. You did -- what did you -- what were people saying about
21 the horses?

22 A. A few of them identified themselves as local ranchers who
23 were there in support of Cliven.

24 Q. So, this time did you go north again toward the staging
25 area?

Alex Ellis - Direct

1 A. Yes.

2 Q. Okay. Did you find a place to park?

3 A. Yes. South of the bridge again.

4 Q. So you parked south of the bridge?

5 A. Yes, and walked north across it.

6 Q. Now, when you got to the stage area, did -- how large was
7 the crowd when you first got there?

8 A. Several hundred. Between 2- and 300, I'd say.

9 Q. Now, Mr. Flynn, did he have with him a recording device of
10 sort some?

11 A. He did. He had a camera.

12 Q. What was his purpose for being there that day?

13 MR. LEVENTHAL: Objection. Calls for speculation and
14 no foundation.

15 BY MR. MYHRE:

16 Q. Well, do you know what he was going to be doing with the
17 camera that day?

18 A. Yes.

19 Q. And what was that?

20 A. He was there to gather interviews for his job at the news
21 agency.

22 Q. And during the course of April 12th, did you attend most
23 of the events of that day at the staging area and subsequently
24 down at the wash?

25 A. Yes, I was with him for almost the whole day.

Alex Ellis - Direct

1 Q. And during that time, was he recording images as they were
2 occurring that day?

3 A. Yes.

4 Q. Did you also assist him in recording images?

5 A. I did.

6 Q. Now, since that date, Mr. Flynn has passed; is that
7 correct?

8 A. It is.

9 Q. You have reviewed, have you not, the videos that were
10 recorded that day; is that correct?

11 A. I have.

12 Q. And you reviewed those at the US Attorney's Office here in
13 this District of Nevada?

14 A. Yes.

15 Q. What I'd like to do now is go through some of those with
16 you.

17 Now, Mr. Ellis, we have a number of exhibits. And
18 these recordings were broken up into several different files;
19 is that right?

20 A. Yes.

21 Q. And just for record purposes, we have marked those files
22 separately on the exhibit list. So I'd like you just to, if
23 you could, pull the binder beginning with Exhibit 51, please.

24 MR. LEVENTHAL: Your Honor, before we begin, may we
25 have a quick sidebar?

Alex Ellis - Direct

1 THE COURT: No.

2 MR. LEVENTHAL: Well, there's an issue. I didn't
3 know that Mr. Flynn passed away. And so there's an
4 authenticity.

5 I mean, is Mr. Ellis going to authenticate, I guess,
6 because he saw? Because we wanted to bring in video ourselves,
7 and this is news for me that Mr. Flynn passed away.

8 THE COURT: I don't hear an objection. We'll see if
9 Mr. Ellis can authenticate these videos or not, and then I will
10 ask you if you want to lodge an objection.

11 MR. LEVENTHAL: Very good.

12 BY MR. MYHRE:

13 Q. And Your Honor, Court's indulgence. Because there are so
14 many, I'd like to take them in groups.

15 Beginning with Exhibits 51, 52 and 53, and you have
16 there in -- in your book various disks; is that correct?

17 A. Yes.

18 Q. And you have reviewed the files that are on those disks;
19 is that correct?

20 A. Yes.

21 Q. And they are fair and accurate depictions of the events as
22 you witnessed them on April the 12th of 2014; is that correct?

23 A. Yes.

24 MR. MYHRE: Your Honor, we offer Exhibits 51, 52, and
25 53.

Alex Ellis - Direct

1 THE COURT: Any objection to Exhibits 51, 52 and 53?

2 MR. TANASI: Your Honor, I think we lodge the same
3 authenticity objection as well and foundation.

4 MR. MARCHESE: Parker joins and adds chain of
5 custody.

6 MR. LEVENTHAL: Mr. Drexler joins.

7 MR. ENGEL: Engel joins.

8 MR. PEREZ: Lovelien joins.

9 MR. JACKSON: I'd just like to ask a few questions on
10 voir dire, and I may or may not have an objection until certain
11 questions are asked about foundation.

12 THE COURT: Mr. Myhre, do you want to set a
13 foundation? He said he was there. He said he helped Mr. Flynn
14 to take the videos. He has reviewed them. He says they are
15 fair and accurate.

16 I don't know what other foundation you are looking
17 for.

18 MR. JACKSON: Well, chain of custody is one thing.
19 That's the main thing. Whether the videos have been -- you
20 know, when was the last time he saw them? Whether they could
21 have been altered? There's a number of questions that I would
22 like to ask.

23 MR. MYHRE: That's fair game for cross-examination,
24 Your Honor.

25 MR. JACKSON: All right. Then I -- I don't have any

Alex Ellis - Direct

1 objection if I can ask adequate questions on cross.

2 THE COURT: You can ask him on cross-examination.

3 All right. So Exhibit 51, 52, and 53 will be
4 admitted. He said it was a fair and accurate representation of
5 what he and Mr. Flynn videotaped on April 12.

6 MR. MYHRE: Thank you, Your Honor.

7 (Exhibit 51, 52 and 53 admitted.)

8 BY MR. MYHRE:

9 Q. Now, Mr. Ellis, during the course -- did there come a time
10 Mr. Bundy spoke to the group that was assembled there?

11 A. Which Bundy?

12 Q. Mr. Cliven Bundy.

13 A. Yes.

14 Q. And before he spoke, did Mr. Ellis, you know, pan the
15 crowd or take photos -- or, excuse me -- record images of the
16 area surrounding the stage and so forth?

17 A. You mean did Mr. Flynn?

18 Q. Mr. Flynn. I'm sorry. What did I say?

19 A. Mr. Ellis.

20 Q. Oh, I'm sorry. I apologize. Mr. Flynn.

21 A. Yes, he did.

22 MR. MYHRE: May we publish 51, Your Honor?

23 THE COURT: Yes, you may.

24 (Exhibit 51 being played.)

25 BY MR. MYHRE:

Alex Ellis - Direct

1 Q. Thank you. So in that segment there, Mr. Ellis, what --
2 what did we observe?

3 A. A few of the protesters standing while they sang the
4 National Anthem.

5 Q. Was that -- were there things like that we've seen
6 depicted in this video here? Were people singing songs and
7 doing the sort of things that would be described as
8 patriotic-type of things?

9 A. Yes.

10 Q. Nicole, can we back that up to just right in the
11 beginning. That's fine right there.

12 I had this at the very beginning segment. Do you
13 see, in the foreground there, a person -- circling right here.
14 Do you see this person?

15 A. Yes.

16 Q. And was this the only time you saw this person this day?

17 A. No.

18 Q. Did you see him later in the day as well?

19 A. Yes.

20 MR. MYHRE: If we could move to Exhibit 52, please,
21 and may we publish, Your Honor?

22 THE COURT: Yes, 52.

23 BY MR. MYHRE:

24 Q. I am sorry. So on this particular image here, Mr. Ellis,
25 you see some numbers along the bottom portion of the image? Do

Alex Ellis - Direct

1 you see that?

2 A. Yes.

3 Q. And what do you know those to be?

4 A. That is the time stamp of the video.

5 Q. Now, the 2014-04-12, that's the date. And the numbers
6 after that 10 underscore 39 underscore 49, would that be the
7 time that was local to Nevada or local to Utah?

8 A. That was Utah local time.

9 MR. MARCHESE: I am going to object as to foundation.

10 BY MR. MYHRE:

11 Q. Do you know whether this particular time stamp here is
12 local to Nevada or local to Utah?

13 A. Local to Utah, meaning it would be an hour ahead of Nevada
14 time.

15 MR. MARCHESE: I would like some more foundation as
16 to his personal knowledge as to how he knows this, when he saw
17 this, whether this was in his possession, all these sorts of
18 things which have not been laid at this point.

19 MR. MYHRE: Your Honor, we have laid the foundation
20 for the --

21 THE COURT: Yeah, you can ask on cross-examination.
22 It goes to the weight.

23 BY MR. MYHRE:

24 Q. Okay, Nicole. If you could advance that, please.

25 (Exhibit 52 being played.)

Alex Ellis - Direct

1 Q. Stop, Nicole, please.

2 Now, Mr. Ellis, the individual who was just speaking,
3 did you recognize that individual?

4 A. I do.

5 Q. And who is that?

6 A. That is Ammon Bundy.

7 Q. And do you know his relationship to Cliven Bundy?

8 A. I believe he's his son.

9 Q. Now, the individual holding the microphone, do you know
10 who that individual was?

11 A. I do.

12 Q. And who is that?

13 A. That is Sheriff Gillespie.

14 Q. Now, drawing your attention to an individual right here,
15 do you recognize that individual?

16 A. I do.

17 Q. And do you know that individual's name?

18 A. I do not.

19 Q. Okay. Did you have occasion to observe him throughout the
20 day that day?

21 A. I did.

22 Q. And was that -- and where did you observe him? At this
23 stage area?

24 A. Yes.

25 Q. Did you notice whether he had any interaction with other

Alex Ellis - Direct

1 people on that stage or below the stage?

2 A. He did.

3 Q. And what type of interaction did you observe?

4 A. He was speaking with several of them including Ammon
5 Bundy.

6 Q. When you say several of them, you mean several people on
7 the stage or elsewhere?

8 A. Yes, on stage.

9 Q. Now, at this time, before the sheriff begins to speak,
10 what was your general -- did you assess the -- the mood of the
11 crowd before this speech we are about to see occurred?

12 A. They seemed happy.

13 Q. How large was the crowd about this point in time?

14 A. Almost 300.

15 Q. And within the crowd, did you see any people with
16 firearms?

17 A. I did.

18 Q. And what type of firearms did you see?

19 A. Both handguns and long guns.

20 Q. And when you say long guns, what are you referring to?

21 A. Rifles.

22 Q. And how -- when you saw people with long guns, how were
23 they being carried?

24 A. Down across the front of their bodies.

25 Q. If you could continue the film, please.

Alex Ellis - Direct

1 (Exhibit 52 being played.)

2 Q. Nicole, stop that, please. Thank you.

3 Now, we just heard the recording. What I wanted to
4 ask you, Mr. Ellis, was were you aware that the meeting was
5 going to be taking place before Sheriff Gillespie got there?

6 A. Not until after arriving.

7 Q. After you arrived there?

8 A. Uh-huh.

9 Q. And was this a matter that was generally discussed among
10 people in the crowd?

11 A. Yes. That's where I found out about it from.

12 Q. When you -- before the sheriff arrived, did you have a
13 sense of what -- from your discussion, was that -- what the
14 speech was going to be about or the appearance of the sheriff,
15 what that was going to be about?

16 A. They spoke of a press release where they had decided the
17 cattle would be released from the BLM.

18 Q. Well, that's what the sheriff just said. Was that
19 discussed before the sheriff even got there, or was there some
20 anticipation as to what the sheriff was going to say?

21 A. Yes, that is when we first heard about it was before the
22 sheriff had spoken.

23 Q. Now, just drawing your attention to another individual,
24 the person I have just drawn an arrow to, did you happen to see
25 him that day on the stage?

Alex Ellis - Direct

1 A. I did.

2 Q. Did you observe his actions?

3 A. He was also speaking with others up on the stage.

4 Q. And do you know that individual's name?

5 A. I do not.

6 Q. Okay. Nicole, if you could continue, please.

7 (Exhibit 52 being played.)

8 Q. And the record should reflect that the segment has ended.

9 Now, Mr. Ellis, the individual speaking, do you
10 recognize who that was?

11 A. I do.

12 Q. And who was that?

13 A. That was Cliven Bundy.

14 Q. Now, we just heard what he said, but I wanted to explore
15 what you, as -- when you were there, what you were perceiving
16 or what you were understanding as to what he was saying. What
17 was your understanding from what he said?

18 A. He was asking for the sheriff to disarm the National Park
19 Service as well as to tear down the tollbooths to entry to
20 those parks.

21 Q. Now, when we heard the reaction of the crowd to that, what
22 was your reaction to that?

23 A. My reaction to the crowds' reaction?

24 Q. No, your reaction to what Mr. Bundy had said.

25 A. I thought it was unreasonable.

Alex Ellis - Direct

1 MR. MARCHESE: Objection. Relevance.

2 MR. TANASI: Stewart joins.

3 MR. MYHRE: It's completely relevant, Your Honor.

4 He's a listener to the speech at the time. It's his
5 impression.

6 THE COURT: All right. I will allow it. Overruled.

7 BY MR. MYHRE:

8 Q. Now, in terms of your overall sense of the rest of the
9 crowd, what was -- what was your impression as to how they
10 received it?

11 MR. TANASI: Objection, Your Honor. Speculation.

12 BY MR. MYHRE:

13 Q. Just what your impression was at the time. Did you have
14 an impression?

15 A. They were expecting unreasonable goals.

16 Q. Now, following this speech, did you see -- it appears that
17 the sheriff left. Did you observe the sheriff leave and his
18 staff?

19 A. Yes.

20 Q. If we could play Exhibit 53, please.

21 (Exhibit 53 being played.)

22 Q. And the record should reflect we've played to the end of
23 segment 53.

24 In that particular segment, we saw some horses in --
25 go up some high ground; is that correct?

Alex Ellis - Direct

1 A. Yes.

2 Q. Now, where was that high ground in relationship to the
3 stage?

4 A. Directly across from it.

5 Q. Was it directly across from the other side of the road?

6 A. Yes. Yes, across the stage to the other side of the road.

7 Q. Did you see where the horses came from?

8 A. They seemed to be coming from the north.

9 Q. And how did the crowd react to the horses?

10 A. Happily.

11 Q. Now, I'd like you to turn to Exhibits 57, 58 and 59,
12 please. Do you have those?

13 A. Yes.

14 Q. Yes, and have you reviewed those exhibits as well before
15 coming in to court?

16 A. I have.

17 Q. And are they also fair and accurate depictions of the
18 events as you witnessed them on April 12th, 2014?

19 A. They are.

20 MR. MYHRE: Thank you. May we offer, Your Honor,
21 Exhibits 57, 58 and 59?

22 THE COURT: Any objection to 57, 58 and 59?

23 MR. MARCHESE: Parker objects to all the exhibits on
24 the grounds of authentication and chain of custody.

25 MR. TANASI: Stewart joins, Your Honor.

Alex Ellis - Direct

1 MR. LEVENTHAL: Drexler joins, Your Honor.

2 MR. ENGEL: Engel joins, Your Honor.

3 MR. PEREZ: Lovelien joins.

4 MR. JACKSON: I have reserved my right to object
5 pending cross-examination.

6 THE COURT: All right. Thank you. Exhibits 57, 58
7 and 59 will be admitted.

8 The witness has stated they are a fair and accurate
9 representations of the videos that -- of the events that he saw
10 on April 12th.

11 (Exhibit 57, 58 and 59 admitted.)

12 MR. MYHRE: May we publish, Your Honor?

13 THE COURT: Yes.

14 MR. MYHRE: Thank you.

15 Q. Now, before we play 57, Mr. Ellis, after the sheriff left
16 and after the horses went up onto the high ground, did there --
17 Mr. Bundy had stated that they had an hour. What happened
18 during that intervening hour?

19 A. During the hour, several people came up on stage. They
20 sang the National Anthem a few times, recited poetry, told
21 stories.

22 Q. And during the hour, how would you describe -- did you
23 have an impression of just the general mood of the crowd?

24 A. They seemed happy. They seemed like they believed they
25 were getting what they wanted.

Alex Ellis - Direct

1 Q. If we could play Exhibit 57, please.

2 (Exhibit 57 being played.)

3 Q. Now, Mr. Flynn -- or, excuse me, Mr. Ellis, we saw at the
4 very beginning of this a time stamp of about 11:49; would that
5 be correct?

6 A. Yes.

7 Q. So would that be about 10:49 local Nevada time?

8 A. Yes.

9 Q. Now, focus your attention, please, to right here in front.
10 I'm drawing an arrow toward an individual. Do you know who
11 that individual is?

12 A. I do not.

13 Q. And but does he appear to be wearing some sort of uniform?

14 A. Yeah.

15 MR. MARCHESE: Objection. Leading.

16 MR. TANASI: And best evidence, Your Honor.

17 BY MR. MYHRE:

18 Q. Do you see what he's wearing?

19 A. I do.

20 Q. What is he wearing?

21 A. It's wearing camouflage.

22 Q. Now, were there a number of people like that?

23 A. There were.

24 Q. And were any of them located in and around Mr. Bundy?

25 A. Yes.

Alex Ellis - Direct

1 Q. And where were they located?

2 A. In front of the stage and several on the stage.

3 Q. Did you observe what they were doing?

4 A. They also seemed to be providing security for Mr. Bundy.

5 Q. Did you notice any patches or any identifying marks about
6 their uniforms?

7 A. I did.

8 Q. And what did you? What did you observe?

9 A. Many of them had patches on their arms identifying them as
10 Oath Keepers.

11 Q. Did you have an understanding of what Oath Keepers were at
12 that time?

13 A. I did. I read they were a local militia.

14 Q. Now, in the very first part of this video clip, we heard a
15 voice and about taking -- taking the video itself. Was that
16 Mr. Flynn's voice?

17 A. Yes.

18 Q. Continue, please.

19 (Exhibit 57 being played.)

20 Q. And the record should reflect that was the end of the clip
21 of the Exhibit 57.

22 During this time period, Mr. Ellis, what's is your --
23 what's going on here? Do you recall?

24 A. Cliven Bundy had returned after just under an hour and was
25 asking his supporters how much longer they should wait for the

Alex Ellis - Direct

1 sheriff to meet his demands.

2 Q. So essentially, they are waiting for the hour to end?

3 A. (Nods head.)

4 MR. MYHRE: And if we could publish Exhibit 58,
5 please? Court's permission?

6 THE COURT: Yes.

7 (Exhibit 58 being played.)

8 BY MR. MYHRE:

9 Q. Okay. Mr. Ellis, at the beginning of the clip, I think we
10 saw a time stamp of 11:53; is that correct?

11 A. Yes.

12 Q. Which would be 10:53 local; is that right?

13 A. Excuse me. Sorry?

14 Q. That would be 10:53 local; is that right?

15 A. Yes.

16 Q. We also saw some what appeared to be police vehicles enter
17 the area; is that correct?

18 A. Yes.

19 Q. Did you observe that?

20 A. I did.

21 Q. And what were those vehicles?

22 A. They appeared to be Las Vegas Metro.

23 Q. We saw a shot there of a road. What road was that?

24 A. That would be the highway that drove past the stage site.

25 Q. And you saw a number of vehicles parked along there as

Alex Ellis - Direct

1 well; correct?

2 A. Yes.

3 Q. Was it difficult to find parking in and around that area?

4 A. It was.

5 Q. And why was that?

6 A. Because there were so many people there.

7 MR. MYHRE: Court's indulgence to publish Exhibit 59.

8 THE COURT: It's 2:55, and so why don't we go ahead
9 and take a break here.

10 MR. MYHRE: Very well, Your Honor.

11 THE COURT: And during this break -- how long do we
12 need, Aaron?

13 COURTROOM ADMINISTRATOR: About 20 minutes, Your
14 Honor.

15 THE COURT: We'll take a 20-minute break. And I
16 remind the jury that you are not to discuss this case with
17 anyone, not permit anyone to discuss the case with you, do not
18 read or listen to or view anything that touches upon this case
19 in any way. Do not perform any research or investigation, and
20 do not form any opinion.

21 It's 2:55, so we should plan to be back here at 3:15.
22 Go ahead and stand for the jury.

23 And Mr. Ellis, after the jury has exited, then you
24 may go ahead and exit as well and stretch, use the bathroom,
25 whatever you need to do. Please be back here by 3:15 p.m.

Alex Ellis - Direct

1 (Jury out.)

2 COURTROOM ADMINISTRATOR: Off record.

3 (Recess 2:55 p.m. Resumed 3:33 p.m. Jury out.)

4 THE COURT: Thank you. You may be seated.

5 Let's go ahead and call in the jury.

6 (Jury in.)

7 THE COURT: Everyone may be seated. We are joined by
8 the jury. And we have the witness. Mr. Alex Ellis is back on
9 the stand. Thank you, sir, for being back on time.

10 Mr. Myhre, you may go ahead and continue with your
11 direct examination.

12 MR. MYHRE: Thank you, Your Honor. May we publish
13 Exhibit 59 at this point?

14 THE COURT: Yes.

15 (Exhibit 59 being played.)

16 BY MR. MYHRE:

17 Q. Stop right there for me, please.

18 Mr. Ellis, we just stopped the segment 59. And did
19 you see an individual -- you see his arm here in this frame
20 holding what appears to be some sort of device. Do you
21 recognize that individual?

22 A. Yes.

23 Q. And did you see him out there that day?

24 A. I did.

25 Q. And again, in this angle, we also see several individuals

Alex Ellis - Direct

1 in front of the stage; is that correct?

2 A. Yes.

3 Q. And who do you recognize those individuals to be?

4 A. The same men in camouflage who were providing security it
5 seemed.

6 Q. Please continue.

7 (Exhibit 59 being played.)

8 Q. Mr. Ellis, we just watched the end of segment 59. A
9 couple of things.

10 First all, did you hear mention of the Powerline Road
11 and the Toquop Wash?

12 A. Which road?

13 Q. Powerline Road and Toquop Wash. Did you hear those
14 references in this segment?

15 A. I heard Toquop Wash but not Powerline Road.

16 Q. Did you have any idea where Toquop Wash was?

17 A. No.

18 Q. Now, after -- so you were there, and Mr. Bundy was
19 speaking in that segment; is that correct?

20 A. Yes.

21 Q. Did you observe how the crowd reacted to that?

22 A. Yes. They were excited about it.

23 Q. And did the crowd do anything in response to what he had
24 said?

25 A. They started to gather in their vehicles and head down to

Alex Ellis - Direct

1 the I-15.

2 Q. In which direction did they head?

3 A. To the north.

4 Q. What did you do and Mr. Flynn do?

5 A. We did the same. We got in our car and headed up north to
6 I-15.

7 Q. Now, did you notice whether -- again, you talked about the
8 crowd previously. Did you notice whether any people with guns
9 left that area as well?

10 A. Yes.

11 Q. Did you notice where they happened to be headed?

12 A. To their cars up north to I-15.

13 Q. When you left that area then, did you -- you drive
14 apparently?

15 A. Yes.

16 Q. And who was with you?

17 A. Michael Flynn.

18 Q. And did you have any sense or any impression as to the
19 potential for any harm to come to you if you were to move with
20 the rest of the group?

21 A. Yes. We discussed that, Michael and I, that it may be
22 dangerous.

23 MR. MARCHESE: Objection. Hearsay.

24 MR. MYHRE: Just asking for what his impression was,
25 Your Honor.

Alex Ellis - Direct

1 THE COURT: All right. Without telling us what
2 Mr. Flynn said, just tell us your impression.

3 THE WITNESS: I felt it would be dangerous.

4 BY MR. MYHRE:

5 Q. And why was that?

6 A. Because I knew many of the supporters as well as the BLM
7 were armed.

8 Q. And how did you know that?

9 A. Because I had seen them.

10 Q. And had you -- had you received any information that
11 anybody had disarmed the BLM?

12 A. No. That's part of the reason why they left, because they
13 didn't meet those -- those demands.

14 Q. Now, we'll move forward. And if I could have you look in
15 your exhibit book at Exhibits 64 and 70, 71 and 72. And you
16 have reviewed those?

17 A. Yes.

18 Q. And again, those are true and accurate depictions of
19 images that were captured on or about April 12, 2014; is that
20 correct?

21 A. They are.

22 Q. And you have reviewed each of those outside the courtroom
23 today?

24 A. I have.

25 Q. And those were the -- they accurately depict the events as

Alex Ellis - Direct

1 you witnessed them on the 12th of April?

2 A. They are.

3 MR. MYHRE: Your Honor, we offer Exhibits 64, 70, 71
4 and 72.

5 THE COURT: Any objection?

6 MR. MARCHESE: Same objection to Parker,
7 authentication and chain of custody. And we'd ask for a
8 continuing objection.

9 MR. TANASI: Stewart joins.

10 MR. LEVENTHAL: Drexler joins.

11 MR. ENGEL: Engel joins.

12 MR. PEREZ: Lovelien joins.

13 MR. JACKSON: I will just reserve my objection until
14 cross-examination.

15 THE COURT: All right. Thank you.

16 The witness said that they are what they purport to
17 be and they fairly and accurately depict the scene where he was
18 on April 12, 2014.

19 Lack of foundation doesn't seem to be an issue, and
20 I'm going to let you ask questions about chain of custody, but
21 that doesn't go to admissibility.

22 So it will be admitted. Did you want to go ahead and
23 start publishing?

24 MR. MYHRE: Please, Your Honor, 64.

25 THE COURT: 64. All right.

Alex Ellis - Direct

1 MR. MYHRE: Thank you.

2 (Exhibits 64, 70, 71 and 72 admitted.)

3 (Exhibit 64 being played.)

4 BY MR. MYHRE:

5 Q. Mr. Ellis, we have stopped this clip. And again, the time
6 stamp below reads what?

7 A. Reads 12:18:28.

8 Q. And local time would be?

9 A. That would be 11:18:28.

10 Q. And in this image, what are we viewing?

11 A. Las Vegas Metro police as well as civilian vehicles headed
12 east down the northbound I-15.

13 Q. So looking at the northbound 15?

14 A. Yes.

15 Q. And you are headed?

16 A. Headed east.

17 Q. Not northbound, but it's headed east there?

18 A. Correct.

19 Q. Please proceed.

20 (Exhibit 64 being played.)

21 Q. During that segment, Mr. Ellis, what did we observe?

22 A. Las Vegas Metro police continuing to drive east on the
23 northbound I-15 towards the site where the protesters had moved
24 to.

25 Q. And we heard the words "You see that?" Who spoke those

Alex Ellis - Direct

1 words?

2 A. I did.

3 Q. And the other voice that we heard on this segment, was
4 that of Mr. Flynn?

5 A. Yes.

6 Q. And when you say "You see that," to what were you
7 referring?

8 A. Where the protesters had gathered.

9 MR. MARCHESE: May we publish Exhibit 70, Your Honor?

10 THE COURT: Yes.

11 (Exhibit 70 being played.)

12 BY MR. MYHRE:

13 Q. Stop it, Nicole.

14 We hear someone talking again in this segment of the
15 video. That is Mr. Flynn speaking?

16 A. Yes.

17 Q. What is the discussion there?

18 A. At the time, I was only 17 years old, so he was asking me
19 to leave so I wouldn't be a liability to the news company.

20 Q. And we saw also an image of someone with a gun; is that
21 correct?

22 A. Yes.

23 Q. And did you -- do you recall seeing that on the 12th?

24 A. Not during what we saw on the camera here.

25 Q. And that's because?

Alex Ellis - Direct

1 A. I was not with Michael during this scene that was
2 recorded.

3 Q. Where were you at that time?

4 A. I was back near the car.

5 Q. And why were you back there?

6 A. Because he was asking me to leave.

7 MR. JACKSON: Your Honor, may we approach the bench
8 at this time?

9 THE COURT: All right.

10 (Sidebar.)

11 MR. LEVENTHAL: Just for the record, Mr. Drexler
12 waives the sidebar.

13 MR. MARCHESE: Parker as well.

14 MR. PEREZ: Lovelien as well.

15 MR. JACKSON: My client would waive being here
16 present.

17 I'm going to join in the objection with other counsel
18 as far as at least the video from here on, because it's clear
19 that this witness can't say that he can vouch for the accuracy
20 of it, because he says from this point on, he wasn't there.

21 And so whatever is on it from this point on, he can't
22 vouch for the accuracy of it. So from this point on, I think
23 we need to shut it off.

24 THE COURT: That seems to be the case, Mr. Myhre.

25 MR. MYHRE: Well, two things, Your Honor. First is

Alex Ellis - Direct

1 that the witness, for authentication, all that is required is
2 that the image is what it purports to be. He does not have to
3 be present for every frame taken.

4 He has already testified that this witness was there
5 and was recording during the events. And as to the sequence of
6 events, during this particular segment, he had moved down the
7 road a bit, but he comes back and later joins with Flynn
8 throughout the remainder of the video.

9 They are not together every minute of every second or
10 every second of every minute on this video, but that's not
11 required under the law. He testified that it is what it
12 purports to be.

13 There's sufficient foundation as to why he's there,
14 what he's doing there, and what Mr. Flynn is doing, so --

15 THE COURT: Okay. I will let you --

16 MR. JACKSON: Can I respond?

17 THE COURT: -- ask the witness if he can see -- if he
18 was there and could see the remainder of what is on the
19 videotape. He's already previously seen the videotape, so he
20 is familiar with it.

21 MR. MYHRE: Yes, Your Honor.

22 THE COURT: So if he tells us that he did actually
23 see himself what's on the videotape, and it's fair and
24 accurate, I don't have a problem with that.

25 But I agree with Mr. Jackson. It sounds like, at

Alex Ellis - Direct

1 this point, he returns to the car. And maybe you are right.
2 At some later point he rejoins Flynn, and from there forward he
3 can testify as to the remainder of that tape.

4 So I will let you ask the question.

5 MR. JACKSON: Can I respond to one thing? The most
6 famous case in history is Richard Nixon for the 18-minute gap.
7 And we got a 19-minute gap. He can't vouch for the accuracy of
8 anything. And if they've got a -- if they've got a five-minute
9 or a six-minute gap --

10 THE COURT: Mr. Jackson, I just agreed with you that
11 from this point on, if this witness was not with Mr. Flynn or
12 saw what Mr. Flynn was videotaping, then it shouldn't be shown
13 to the jury. That portion of it would not be admissible.

14 The remainder of it, at some point, this witness
15 rejoined Mr. Flynn, can see what's viewed, what's being shown,
16 displayed on the video and can say that it's fairly and
17 accurately, then obviously that section would be.

18 MR. JACKSON: I think --

19 THE COURT: But we don't know that yet until
20 Mr. Myhre asks him those questions.

21 MR. MYHRE: Your Honor, may I just add one thing for
22 the record?

23 THE COURT: Sure.

24 MR. MYHRE: If the ultimate ruling by Court is that
25 somehow this wouldn't come in, we would ask the opportunity to

Alex Ellis - Direct

1 brief it. Because there is case law that says that the
2 proponent of the evidence does not have to be present for every
3 portion of the video. He doesn't even have to be present
4 necessarily for the recording of the video as long as they can
5 testify --

6 THE COURT: That it fairly and accurately depicts.
7 But if he's not there, how can he say what it fairly and
8 accurately depicts? We don't know, because all he said is he
9 went back to the car.

10 So in my mind, the vision I'm seeing is him returning
11 to the car --

12 MR. MYHRE: I see.

13 THE COURT: -- closing the door, and he doesn't have
14 a view of anything other than what he can see from the windows
15 of the car. I don't know where this video going.

16 If the video stays in same area where he's seated and
17 he can actually see it, just from a different vantage point,
18 then I don't have a problem with that.

19 We don't know that is the problem, so you need to
20 establish that with your questions.

21 MR. MYHRE: Thank you.

22 MR. TANASI: If I can just join for Stewart. I came
23 here late.

24 THE COURT: Sure.

25 (End of sidebar.)

Alex Ellis - Direct

1 THE COURT: All right. Mr. Myhre, you may continue.

2 MR. MYHRE: Thank you.

3 Q. Mr. Ellis, you testified that you -- at this point, you
4 went back to the car. Where was the car?

5 A. Probably 30 or 40 feet south of where Michael was standing
6 in that clip.

7 Q. So, that -- while you may not have been standing next to
8 him at the time that that was taken, were you -- did you see
9 that area where this video was taken?

10 A. Yes. We were parked in the area that the protesters had
11 moved to.

12 Q. So was this area visible from where you were?

13 A. Yes, you can see it in the clip.

14 Q. And does that -- what -- this area as depicted on this
15 video, does that fairly and accurately depict what you were
16 able to observe?

17 A. Yes.

18 THE COURT: Just to be clear, so you could see from
19 the vehicle everything that's shown on this video?

20 THE WITNESS: Yes, I could see the freeway and the
21 people approaching.

22 THE COURT: All right. So you have already seen this
23 video before today; right?

24 THE WITNESS: Yes.

25 THE COURT: And everything you see in the video, you

Alex Ellis - Direct

1 also had a vantage point from the car that you could see.

2 THE WITNESS: Yes. You can see where we were parked
3 in the video.

4 THE COURT: So at no point did Mr. Flynn, with his
5 video, walk over into another area where now, for whatever
6 reason, it's blocked and you can't see what he's taping?

7 THE WITNESS: No.

8 THE COURT: All right. You may go ahead and
9 continue.

10 MR. MYHRE: If we could continue the video, please.

11 (Exhibit 70 being played.)

12 Q. Now, Mr. Ellis, at the end of this particular clip, we saw
13 a number of cars. What was that area where we saw the cars?

14 A. That was the area where the protesters had started to
15 convene after Cliven's speech and also where we had parked.

16 Q. Now, after you parked, did you later rejoin Mr. Flynn?

17 A. Yes. I believe I'm with him in the next clip.

18 MR. MYHRE: May we publish Exhibit 71, Your Honor?

19 THE COURT: Yes, you may.

20 (Exhibit 71 being played.)

21 Q. And what did we just observe in that clip, Mr. Ellis?

22 A. That was me asking Michael if I could upload pictures of
23 what we were seeing to the Internet.

24 Q. And what were you seeing?

25 A. A lot of police standing between the northbound and

Alex Ellis - Direct

1 southbound I-15.

2 MR. MYHRE: And may we publish Exhibit 72, Your
3 Honor?

4 THE COURT: All right. You may publish 72.

5 (Exhibit 72 being played.)

6 BY MR. MYHRE:

7 Q. And in Exhibit 72, is that -- are you still in that
8 parking area?

9 A. Across the interstate from it.

10 Q. Across?

11 A. It's on the other side of the northbound.

12 Q. Okay.

13 A. In the median area.

14 Q. And we saw -- we saw a number of flags in that particular
15 segment; did we not?

16 A. Yes.

17 Q. Did you observe flags?

18 A. Yes.

19 Q. Now I will move on to Exhibits 74, 76, and 77. And same
20 as before, if you would look at 74?

21 A. Yes.

22 Q. 76?

23 A. Yes.

24 Q. And 77?

25 A. Yes.

Alex Ellis - Direct

1 Q. And are those clips that you have reviewed outside the
2 courtroom today?

3 A. Yes.

4 Q. And do they fairly and accurately depict the events as you
5 witnessed them on the 12th April -- excuse me -- 12th of
6 April 2014?

7 A. Yes.

8 MR. MYHRE: Your Honor, we offer Exhibits 74, 76 and
9 77.

10 THE COURT: Any objection?

11 MR. MARCHESE: Parker, same objections.

12 MR. TANASI: Stewart joins, Your Honor.

13 MR. LEVENTHAL: Drexler joins, Your Honor.

14 MR. ENGEL: Engel joins, Your Honor.

15 MR. PEREZ: Lovelien joins.

16 MR. JACKSON: I will just reserve my right to object
17 after cross.

18 THE COURT: All right. Thank you.

19 Exhibits 74, 76 and 77 will be admitted.

20 (Exhibit 74, 76 and 77 admitted.)

21 MR. MYHRE: May we publish 74, Your Honor?

22 THE COURT: Yes.

23 (Exhibit 74 being played.)

24 MR. MYHRE: And 76, Your Honor?

25 THE COURT: Yes. Yes.

Alex Ellis - Direct

1 (Exhibit 76 being played.)

2 BY MR. MYHRE:

3 Q. Now, in Exhibit 72, if you recall seeing that, where were
4 you located then? Where was that taken?

5 A. Further west on the I-15 northbound.

6 Q. Now, on Exhibit 74, we saw -- at the start of that, where
7 were you located then at the beginning of 74?

8 A. We had moved east up the I-15 northbound to the wash.

9 Q. And was there anything in particular that drew your
10 attention to the wash area?

11 A. The reason we went over there is because we were in the
12 original spot where the protesters had went, and a lady had
13 came up and started yelling at everybody saying that the BLM
14 was down further on the highway supposedly pointing guns at
15 civilians she said.

16 Q. And how did you react to that?

17 A. As reporters, we thought that that was something we should
18 cover, so we ran down there.

19 Q. Okay. So you and -- was Mr. Flynn with you?

20 A. Yes.

21 Q. Now, at the scene that we saw at the opening of this, what
22 was that?

23 A. Some of the protesters shouting at the BLM from the top of
24 the I-15.

25 Q. Now, in terms of the actual geographic area, was that a

Alex Ellis - Direct

1 shot of the wash?

2 A. Yes.

3 Q. During that segment, did you hear any references to court
4 orders?

5 A. Yes, I believe I did.

6 Q. And did you hear anything about court orders while you
7 were in the wash?

8 A. Some of the protesters were shouting things such as your
9 court order does not apply here. Things to that effect.

10 Q. Now, we saw a shot of what appeared to be vehicles on the
11 southbound bridge or just north of the southbound bridge; is
12 that correct?

13 A. Yes.

14 Q. And do you have an understanding of what those were?

15 A. We believed those were BLM and federal agents as well as
16 Las Vegas Metro police.

17 MR. MYHRE: Your Honor, may we publish Exhibit 77?

18 THE COURT: Yes.

19 (Exhibit 77 being played.)

20 BY MR. MYHRE:

21 Q. Mr. Ellis, during that segment, first of all, where --
22 from what vantage point is this scene being shot?

23 A. Still on top of the northbound I-15.

24 Q. And just generally, what did we view in this latest
25 segment?

Alex Ellis - Direct

1 A. The horsemen from earlier in the day had arrived in the
2 wash and the protesters seemed to rally behind them and start
3 to approach the BLM position.

4 Q. And that segment, we had a time stamp on that at around
5 12:56; was that correct?

6 A. Yes.

7 Q. Which would be 11:56?

8 A. Yes.

9 Q. So we will proceed on. We will move to Exhibits 78, 79
10 and 80.

11 And same as before. If you could look at 78, please
12 and then 79 and 80. And outside of the presence of the jury,
13 you have reviewed these video clips previously; correct?

14 A. I have.

15 Q. And they fairly and accurately depict the events as you
16 witnessed them on April 12, 2014; correct?

17 A. They do.

18 MR. MYHRE: Your Honor, we offer Exhibits 78, 79 and
19 80.

20 THE COURT: Any objection?

21 MR. MARCHESE: Parker, same objection.

22 MR. TANASI: Stewart joins.

23 MR. LEVENTHAL: Drexler joins.

24 MR. ENGEL: Engel joins.

25 MR. PEREZ: Lovelien joins.

Alex Ellis - Direct

1 MR. JACKSON: I am going to object on a couple of
2 grounds.

3 One, I think there's some prejudicial material in the
4 one that violates Federal Rule of Evidence 40 -- 401 and 403.
5 It's more prejudicial than probative.

6 Particularly, it also violates the confrontation
7 clause. The comments from Mr. Flynn -- and I'm going to ask to
8 make a motion that parts of it be stricken.

9 The comments of Mr. Flynn about that the police were
10 afraid, that's a conclusion which he made, but he's not subject
11 to cross-examination. It's also highly prejudicial, and the
12 government brought it in by bringing this video, which was good
13 tactics by them, but I think it's also --

14 MR. MYHRE: Well, Your Honor, we object to the
15 speaking objections, quite frankly.

16 MR. JACKSON: I simply object to it, because I have
17 reserved my objections up till now. I am now making an
18 objection.

19 THE COURT: Thank you, Mr. Jackson.

20 Mr. Myhre?

21 MR. MYHRE: Yes, Your Honor. The -- with respect to
22 the comments by Mr. Flynn, there is no confrontation clause
23 issue, since these are non-testimonial statements. They are
24 excited utterances, and they are present sense impressions.
25 He's recording as he's viewing what is occurring before him.

Alex Ellis - Direct

1 So therefore, to the extent they are hearsay, they --
2 they are clearly an exception to the rule against hearsay.

3 MR. MARCHESE: Your Honor, I'm going to join his
4 objection. And I would disagree respectfully with Mr. Myhre,
5 who I have the utmost respect for.

6 But I'm going to disagree that they are a present
7 sense impression, because we cannot lay or he cannot lay any
8 foundation as to an excited utterance of these particular
9 statements, because the individual, Mr. Flynn, who was making
10 these statements, is not here.

11 And it's irrelevant what his state of mind --
12 Mr. Flynn's state of mind is, talking about what the officers
13 were allegedly feeling or thinking at the time.

14 So, I think Mr. Jackson is absolutely correct, and I
15 join his motion.

16 MR. JACKSON: The other thing, Your Honor, he was a
17 reporter doing this for pay. So I don't think it was an
18 excited utterance. He made this video hoping to sell it, I
19 believe, or at least as part of his job. So I don't think it's
20 an excited utterance.

21 MR. TANASI: Your Honor, Mr. Stewart joins.

22 MR. LEVENTHAL: Mr. Drexler joins.

23 MR. ENGEL: Engel joins.

24 MR. PEREZ: Lovelien joins.

25 THE COURT: All right. Well, the Court disagrees.

Alex Ellis - Direct

1 There is no confrontation clause issue. It's not testimonial.
2 It does appear to be a present sense impression.

3 So Exhibits 78, 79, and 80 will be admitted.

4 (Exhibit 78, 79, and 80 admitted. 79 and 80 later
5 withdrawn.)

6 MR. MYHRE: Thank you, Your Honor. And may we
7 publish 78, Your Honor?

8 THE COURT: Yes, you may.

9 (Exhibit 78 being played.)

10 BY MR. MYHRE:

11 Q. If you could back up just a bit, Nicole. Right there.
12 Thank you. Thank you.

13 Now, Mr. Ellis, we've heard -- we heard Mr. Flynn
14 asking you to do something; correct?

15 A. Yes.

16 Q. And what was he asking you to do?

17 A. He was asking me to take note of what the BLM was saying
18 to the protesters.

19 Q. Now, at the time that this segment of the video was shot,
20 were you still in the same area as you described before?

21 A. Yes, on top of the I-15.

22 Q. Could you hear what was being said by the people on the
23 other side of that gate?

24 A. Yes. It was difficult though.

25 Q. Okay. And what did you understand them to be saying?

Alex Ellis - Direct

1 A. I understood them to be saying -- asking the protesters to
2 please disburse, and that they are authorized to use up to
3 lethal force.

4 Q. Now, did you later move from that area further up the
5 wash?

6 A. Later on, yes.

7 Q. And as you got closer to the area up the wash, could you
8 hear clearer than where you were at the time this video was
9 shot?

10 A. By the time I moved up, they had stopped saying it.

11 Q. So if we could continue, please, with 78.

12 (Exhibit 78 being played.)

13 Q. And I think I neglected one thing. I apologize, Your
14 Honor. If we could back up 78 just again, please. Right
15 there.

16 Now, I'm circling an individual here in this
17 particular segment. Do you recognize that person?

18 A. I do.

19 Q. And who is that?

20 A. That is Ammon Bundy.

21 Q. And where had you seen him previously?

22 A. Previously speaking on the stage.

23 Q. And may we publish Exhibit 79, Your Honor?

24 THE COURT: Yes, you may.

25 (Exhibit 79 being played.)

Alex Ellis - Direct

1 BY MR. MYHRE:

2 Q. Stop there, please. Back up just a bit. Right there.

3 Thank you.

4 Now, Mr. Ellis, did there come a time then -- do you
5 recognize the vantage point from where this video is being
6 shot?

7 A. Yes.

8 Q. And where was it being shot from?

9 A. From down in the wash.

10 Q. And do you know what side of the wash?

11 A. From the northbound I-15 looking towards the southbound.

12 Q. Now, drawing your attention to two individuals on the top
13 of the frame here and circling that, do you recognize anyone in
14 that circle?

15 A. I do.

16 Q. And who do you recognize?

17 A. I recognize Ammon Bundy as well as a protester with a
18 rifle I had seen earlier at the stage.

19 Q. Okay. And which one is Ammon Bundy?

20 A. Ammon Bundy is the one on the right taking his hat off.

21 Q. And the other -- does the other individual -- do you
22 notice whether he's carrying a firearm or not?

23 A. I do.

24 Q. And how is he -- what type of firearm is he carrying if
25 you can tell?

Alex Ellis - Direct

1 A. A long gun.

2 Q. And how is he carrying it?

3 A. Down across the front of his body.

4 Q. Now, during the time that videos in the wash were being
5 shot, you and Mr. Flynn were not always together at the same
6 time; is that correct?

7 A. That is correct.

8 Q. Are you able, however, to see him when he's filming?

9 A. Yes. I'm still on top of the northbound I-15 able to see
10 everything that's happening.

11 Q. So everything that's depicted in these videos, you are
12 able to see your vantage point as well; is that correct?

13 A. Yes.

14 Q. Thank you. Please proceed.

15 (Exhibit 79 being played.)

16 Q. That last segment we were able to see a line of people; is
17 that correct?

18 A. Yes.

19 Q. And the vantage point from where that scene was shot or
20 that image was captured rather?

21 A. That would be down in the wash.

22 MR. MYHRE: And may we publish Exhibit 80, Your
23 Honor?

24 THE COURT: Yes.

25 (Exhibit 80 being played.)

Alex Ellis - Direct

1 MR. MYHRE: My apologies, Your Honor. My apologies,
2 Your Honor, 79 had several clips within it, and my notes did
3 not reflect that. So if I may go back and republish 79, clip
4 B.

5 THE COURT: All right.

6 (Exhibit 79, clip B, being played.)

7 Q. And clip C, please.

8 (Exhibit 79, clip C, being played.)

9 Q. Okay. Mr. Ellis, the first clip we saw is clip B, which
10 appeared to be under the southbound bridge; is that correct?

11 A. Yes.

12 Q. Could you tell from what vantage point that video was
13 captured?

14 A. Under the southbound bridge on the west side.

15 Q. Was it above or below the wash?

16 A. Above the wash.

17 Q. Was it -- whereabouts was it -- with proximation to the
18 bridge, was it on that skirt area?

19 A. On the slope area just under the bridge.

20 Q. Now, the next clip we saw, clip C, from which vantage
21 point where was that taken?

22 A. Directly under the bridge in the wash.

23 Q. In relationship to the gate, where was it?

24 A. Directly in front of it.

25 Q. And the individual that we saw in clip C was who?

Alex Ellis - Direct

1 A. Ammon Bundy.

2 MR. MYHRE: Court's indulgence.

3 THE COURT: Sure.

4 MR. MYHRE: And may we publish Exhibit 80, Your
5 Honor?

6 THE COURT: Yes. Is this going to be the last one?
7 Because it's already past 4:30, or do you want to do Exhibit 80
8 tomorrow?

9 MR. MYHRE: Yes, Your Honor. That would be fine.

10 THE COURT: All right. Then we'll go ahead and break
11 for the evening. We will be back here at 8:00 a.m.

12 I do remind the jury, please do not discuss this case
13 with anyone or allow anyone to discuss it with you. If you do
14 hear anything about the case, please let me know right away.

15 Also, do not listen to or read or view anything that
16 touches upon this case in any way. Do not attempt to perform
17 any research or make any independent investigation concerning
18 the case.

19 And do not form any opinion regarding the issues in
20 this case until after you have heard all the evidence, all the
21 testimony, seen everything, the closing arguments. I will
22 provide with you the written jury instructions, and then I will
23 instruct you that you can begin your deliberation process and
24 speak to each other about the case, but not until then.

25 So, we'll go ahead and stand so that you can go ahead

1 and go home for the night. We'll see you back here at
2 8:00 a.m.

3 Mr. Ellis, after the jury exits, then you as well may
4 go home for the night, and we will see you back here at
5 8:00 a.m., please.

6 (Jury out.)

7 THE COURT: All right. Off record.

8 COURTROOM ADMINISTRATOR: Off record.

9 (Recess, 4:35 p.m.)
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COURT REPORTER'S CERTIFICATE

I, KATHERINE EISMANN, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: March 29, 2017.

/s/ Katherine Eismann

Katherine Eismann, CSR CRR RDR